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George Neilson
from his friend
Frederic William Maitland.

BRACTON'S NOTE BOOK.

London: C. J. CLAY AND SONS,
CAMBRIDGE UNIVERSITY PRESS WAREHOUSE,
AVE MARIA LANE.

Cambridge: DEIGHTON, BELL, AND CO.
Leipzig: F. A. BROCKHAUS.

BRACTON'S NOTE BOOK.

A

COLLECTION OF CASES

DECIDED IN THE KING'S COURTS

DURING THE REIGN OF HENRY THE THIRD,

ANNOTATED BY A LAWYER OF THAT TIME,

SEEMINGLY BY

HENRY OF BRATTON.

EDITED BY

F. W. MAITLAND,

OF LINCOLN'S INN, BARRISTER AT LAW,

READER OF ENGLISH LAW IN THE UNIVERSITY OF CAMBRIDGE.

VOL. I. APPARATUS.

LONDON: C. J. CLAY & SONS,

CAMBRIDGE UNIVERSITY PRESS WAREHOUSE,

AVE MARIA LANE.

1887

Cambridge:
PRINTED BY C. J. CLAY, M.A. AND SONS,
AT THE UNIVERSITY PRESS.

TO THE FOUNDER

OF THE READERSHIP OF ENGLISH LAW

IN THE UNIVERSITY OF CAMBRIDGE,

TO

HENRY SIDGWICK,

DOCTOR OF LITERATURE

AND PROFESSOR OF MORAL PHILOSOPHY

IN THE UNIVERSITY AFORESAID,

THIS BOOK

IS REVERENTLY DEDICATED.

PREFACE.

MY best thanks are due, in the first place, to my friend Mr George Barnes of the Inner Temple, and when I say that he laboriously made and generously gave me that index of personal names which will add much to the value of this book, it will be seen that I have good cause to be grateful:—also to Mr J. M. Rigg of Lincoln's Inn for having copied (very carefully as I afterwards found) some thirty pages of the manuscript at a time when I was otherwise engaged:—also to Mr James Greenstreet, who has long known the manuscript, for some useful suggestions:—to the gentlemen who have charge of the Public Record Office, more especially to Mr Walford Selby, for many courtesies which have made my days among the rolls very pleasant:—to Mr Hampshire the Librarian of Exeter Cathedral for a copy of a deed relating to Bracton's place of burial, which he kindly sent to me:—to Mr Melville Bigelow of Boston and Professor Thayer of Harvard for the encouragement given me by friendly letters

from a land where Bracton is at least as well known and at least as highly honoured as he is in England:—and lastly to my friend Mr Frederick Pollock who has been ready always to listen to and generally to answer my questions, and from whom I first learnt to find an interest in the history of law. That the idea of connecting this book with Bracton was due to Professor Vinogradoff of Moscow, I shall explain below, and indeed this will be plain enough from the letter of his, which (by the permission of the editor of the *Athenaeum*) is here reprinted: but I must add that in 1884 and again in 1886 I had the happiness of talking over his discovery with him.

When I say that I am not satisfied with the form in which the Note Book is here made public, this is no conventional protestation. Down to the last moment I have found so many faults in my own work, that I cannot but believe that there are many yet to be found. Down to the last moment I have been learning many things about the law of the thirteenth century which I ought to have known at the outset. For sins of commission no excuse shall be offered, for none should be accepted; but before I am blamed for having done less than might have been done in the way of collating rolls, giving various readings, making indexes and notes, it will I hope be remembered that this has been a private enterprise. I have often had to count the cost; also to reflect that another day in the Record Office or the British Museum would mean another

hundred miles in the train. So the reader gets no facsimiles of the manuscripts; he gets an index where he should have had a digest, perhaps a translation; the luxury of cancelling sheets instead of confessing some stupid blunders, has been denied me, and I am sure that there must be more to be learned about Bracton's life than I have been able to discover: at this eleventh, nay thirteenth, hour I find what I believe to be his marks on a roll of King John's reign (Coram Rege Roll, No 18). But as his treatise had lately been edited at the expense of the nation, and as there was no learned society whose business it was to encourage the study of English legal history (for the Selden Society was not yet born nor even thought of), it seemed likely that the Note Book would remain unprinted for many years, unless some one would make such an edition of it as could be made at his own cost and without giving to it all his time. Perhaps I was not the man for the work; but I have liked it well.

F. W. M.

BROOKSIDE, CAMBRIDGE.
Sept., 1887.

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Pleas in the Bench.

[1] The numbers in the first column of this Table show the chronological order of the Pleas in the Bench.

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Pleas in the Bench.

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Pleas in the Bench.

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ERRATA.

VOL. I.

p. 74, note 1. For *26th Jan.* 19 read *26th Jan.* 1219.

p. 93, in the heading. For *The Third Argument* read *The Fourth Argument*.

VOL. II.

p. 22, l. 6. The nunnery is that of Sinningthwaite in Yorkshire. *Monast.* vol. 5, p. 463.

p. 25, l. 2. The reading was originally *per breue Regis J.* (by a writ of King John); the annotator turned *J* into *ingressu*; seemingly in so doing he made a mistake.

p. 25, Case 30. I misunderstood this case. Jacob, the deforciant in the assize, vouches Benedict, but the voucher is not allowed because Simon, the plaintiff, claims to hold of Jacob. Andrew, Jacob's father, 'incumbered' the tenement by enfeoffing Swanild, Simon's mother; so Benedict, Jacob's lord, is not bound to warrant Jacob against a claim arising out of this 'incumbramentum'. Bracton, f. 261, deals with just this point.

pp. 39, 40, Case 43. I misunderstood this case. In a mort d'ancestor the parol does not demur for the nonage of the defendant, if his ancestor entered as guardian in chivalry. This seems admitted. The case however apparently decides that it is otherwise when the land is held in socage; here the lord can have no business to enter on his tenant's death; if he enters he is a mere intruder, and there is no fiduciary relationship between him and the socager; therefore if he enters and then dies seised, the parol shall demur for his heir's nonage. This provokes from the annotator the exclamation 'Nota, mirum propter socagium!' He thinks it strange that in any case the parol should demur for the nonage of a person who has entered *claiming* (though not really entitled to) guardianship. In the marginal note for *quam petit iniuste* read *quamuis iniuste*.

p. 49, l. 8. For *fuerunt* read *fuerint*.

p. 52, l. 18. The MS. has *quo*, but it should be *quod*.

p. 121, l. 15. *ceperunt uadia sua*; this merely means that the bailiffs took distresses (gages) from them. I thought that in connection with cloth *uadia* might mean *woad*.

p. 138, l. 5. The name must be *Cruues*.

p. 297, l. 19. For *Thome* read *Thomam*.

p. 340, Case 420. The Longueville in question is in Normandy between Isigny and Bayeux.

p. 341, l. 16. For *qui* read *que*.

p. 369, Case 469. The *paruum breue* in question was the vicontiel writ of nuisance, as to which see F. N. B. 184.

p. 373, l. 7. For *Reginaldi* read *Reg'*, which probably stands for *Regis*; see Case 1764.

p. 404, Case 516. *Cuwyc* is not Southwick, but Cowick near Exeter, where was a cell of Bec. *Monast*. vol. 6, p. 1043.

p. 490, l. 17. By *ipse* Peter means himself. He asserts that his own son has better right than William.

p. 506, note 4. Seemingly I was wrong in supposing that the marriage was consummated before the gift was made.

p. 533, note 4. For *defendant* read *demandant*.

p. 534, note 8. The point is this:—A father gives the marriage of his son to *X*; *X* must get the son married during the father's life, for otherwise the father's lord will be entitled to the marriage.

p. 656, note 4. This must mean, not 'until the land shall be at peace', but 'until the land shall have acquitted itself', i.e. probably, until the land shall have repaid a sum of money for which it has been made security.

p. 666, l. 16. *nisi iudicium illum incumbaret* (*corr. incumbraret*). I have given a very bad explanation of this. The king insisted that each of the rebellious barons should come to the court alone, and should go home alone, unless the judgment of the court should incumber, impede, him. Of course in case judgment should go against him there could be no talk of his going home; he would be 'incumbered' by the judgment. Bracton has a similar passage on f. 119. An accused person who is willing to answer the charge 'libere debet recedere, nisi iudicium ei incumberet'.

VOL. III.

p. 16, line 25. The first *pre* in this line should be *pro*.

p. 33. In the heading, for FILIUS read FILII.

p. 132, Case 1115. Selden refers to this case in his Notes on Fortescue; Note 8; I owe this remark to Prof. Thayer. In line 9 on page 133 the words on the roll, which the copyist of the Note Book reads as *et verbis*, should be *in omnibus*.

p. 305, note 1. I withdraw the remark that the name *Munegedene* seems a corruption of *Muntbegun*.

p. 427, note 1. For *Alice* read *Agnes*.

p. 450, line 6. For *reognoscendum* read *recognoscendum*.

p. 468, line 1. For *producati psa* read *producat ipsa*.

p. 566, note 2. More probably this means that if any one gave judgment in the wapentake *the king* would hear of it.

A LETTER OF PAUL VINOGRADOFF PRINTED IN THE ATHENAEUM FOR 19 JULY, 1884[1].

It is well known that the chief importance of Bracton's work on the laws of England is derived from the fact that it is based on a most extensive and careful study of the judicial practice of the thirteenth century. Building on this firm foundation, Bracton was able to produce a treatise which in arrangement, connecting theories, and even in many a particular point, testifies to the influence of Roman jurisprudence and of its mediæval exponents, but at the same time remains a statement of genuine English law, a statement so detailed and accurate that there is nothing to match it in the whole legal literature of the Middle Ages.

The great English judge did not content himself with setting forth in a general way what he held to be the law of his country; he used systematically the rolls of Martin of Pateshull and William of Raleigh, and gives no fewer than 450 references to cases decided by his predecessors and teachers. This being so, it is surely not devoid of interest to inspect rather closely that groundwork of Bracton's treatise, and to trace as far as possible his way of selecting and handling his records. Now I think that a British Museum MS., numbered Add. 12,269, can help us very materially in this direction. It is a collection of cases written about the middle of the thirteenth century, with a good many notes on the margin. The first leaves and the last quires are missing, and there is no direct evidence as to the person who compiled and used the book, but the contents make it very

[1] The Editor of the *Athenaeum* has very kindly consented to this letter being here reprinted.

probable indeed, if not certain, that it was drawn up for Bracton and annotated by him or under his dictation.

If we leave aside the comparatively few instances when Bracton's treatise gives only general references, and take the quotations specifying court and year of the trial, we shall see at once that they may be classed under three heads[1]: 1. Cases tried in the King's Bench, ranging from Michaelmas, 2 Henry III., to Easter, 18 Henry III.; 2. Cases before the King's Council, from 19 to 24 Henry III.; 3. Cases tried in the Eyres of Martin of Pateshull and William of Raleigh during the first half of Henry III.'s reign. There remains a certain, very small, number of stray quotations which do not come under this classification; as, for instance, casual mentions of trials Coram Rege in 31, 32, 38 Henry III. They probably did not belong to the original text of the treatise; but even if they did, their occurrence does not alter the general arrangement.

Now the Add. MS. contains: 1. Cases tried in the King's Bench ranging from Michaelmas, 2 Henry III., to Easter, 18 Henry III.; 2. Cases before the King's Council, from 19 to 24 Henry III.; 3. Cases tried in some of the Eyres of Martin of Pateshull. Unfortunately the MS. breaks off right in the middle of a Staffordshire Eyre, so that we cannot judge how far the other circuits of Martin and those of William of Raleigh had been used. But even what is left is quite sufficient, as I take it, to establish a remarkable coincidence between the book and the Add. MS. (A Patent Roll[2] of 42 Henry III., quoted by Madox, 'History of the Exchequer,' ii. 257, enjoins Henry of Bracton to surrender the rolls of M. de Pateshull and W. de Raleigh which he had been using.)

The extracts, I ought to mention, are made in a very irregular fashion as regards the order of rolls and terms. The compiler did not go by strict chronology, probably because he had not the whole set of records at his disposal at the same time. So we find that after a series of King's Bench terms of the second, fourth, sixth, seventh, and ninth years, earlier rolls come on again. What is more, there are occasions when a roll from which extracts had been made was taken up again, and some new cases

[1] See below, p. 53.

[2] Not a Patent Roll, but a Roll of Exchequer Memoranda; see below, p. 25.

copied out from it[1]. The last is a very important feature because it explains a fact which at first sight seems to tell against the supposed connexion of our MS. with Bracton, namely, that not *all* the cases mentioned in the treatise are to be found under their respective years in the note-book. As a considerable part of this seems to be lost, we cannot expect book and treatise to fit completely.

Passing from a general survey to a closer examination of the contents, we must, of course, advert principally to the subject-matter of the marginal notes in the MS. Are there any striking analogies between their wording and the text in Bracton's treatise? Most of the notes give only in a few short words the substance of the transcribed cases or call attention to particular points in them. But not seldom the annotator criticizes the decision or supplements it by reflections of his own, and then the close relation between note-book and treatise becomes apparent.

An instance is afforded by the passage on the right of a widow to bequeath crops growing on the land she held in dower. Previous to the statute of Merton, 20 Henry III., such a bequest would not have been valid. Bracton, 'De Legibus,' folio 96 *b*, says: "Nova superveniente gracia et prouisione......poterit uxor de fructibus et bladis siue a solo separata fuerint, siue non, testari et pro uoluntate sua disponere." The Add. MS., folio 209 *a*, has: "Modo mutatum est de noua gracia quod potest testamentum facere de blado firmo in terra[2]."

On 169 *b* of the note-book we find the following peculiar illustration: "Terminus terminans set indeterminatus et incertus, et ideo liberum tenementum sicut ad vitam hominis, quia nihil certius morte, nihil incertius hora mortis." The same diction occurs in the treatise, folio 27 *b*: "Si autem fiat donatio ad terminum annorum, quamvis longissimum, qui excedat vitas hominum, tamen et hoc non *habebit donatorius liberum tenementum*, cum *terminus annorum certus sit et determinatus*, et terminus vitæ incertus, et quia *licet nihil certius sit morte, nihil tamen incertius est hora mortis*[3]."

[1] This happens but once and only one new case is copied (Case 1293). I do not think it probable that all the cases cited by Bracton were once in this book. See below, pp. 77—80.

[2] See below, p. 89. [3] See below, p. 89.

The whole disquisition about the natural and artificial, the common and the leap year, given in the treatise, is set out at greater length, but with a literal repetition of some characteristic sentences, in the note-book (195 *b*). The quaint comparisons of the year of 365 days to a bird without a tail and of that of 365 days and six hours to a bird holding its tail in its mouth occur equally in both texts[1].

Speaking about the marginal remarks and insertions of the Add. MS., I must not omit to notice a very important feature in their composition: it is evident that they were written at very different periods. After the collection had been compiled the person for whom it was made seems to have gone through it two or three times. Two observations lead me to this conclusion. Some of the entries, especially where additional matter has been inserted on blank pages, are in distinctly later handwriting (for instance, 196 *a*). A note has been added sometimes where originally there was only a "N^a" to show that the passage deserved special attention. This peculiarity explains the presence of one or two writs which do not occur in Bracton's treatise (195 *b*), and seem to have been especially inserted *because* they did not occur there[2].

Another point requires careful consideration: among the marginal notes of the Add. MS. there is a certain number of references to cases, mostly very incomplete, jotted down by the annotator from general recollection, without any attempt at definite quotation. One can fancy that in reading through the report of a trial of 1227 Bracton was struck by its similarity with a case which had come under his own personal knowledge, and wrote down in the margin: "fere casus Cole" (40 *b*)[3]. A very good instance is given on 185 *b*. The text recites interesting pleadings of some peasants trying to vindicate their right of ancient demesne tenantry against their lord. The note says: "N^a de villanis Henrici de Tracy de Tawystok qui numquam fuerunt in manu Domini Regis nec antecessorum suorum et loquebantur de tempore Regis Edwardi coram Willelmo de

[1] See below, p. 91. The year is compared to a snake, not to a bird.

[2] This refers to Case 1290, in which some hypothetical pleadings in a mort d'ancestor are discussed. Bracton does not deal with the exact point which they raise. See below, p. 91.

[3] See below, p. 100.

Wilton." The entry seems to refer to a trial of 47 Henry III., which, however, took place not before W. de Wilton, but before Middleton and Brewes (transcribed in a Coram Rege Roll of Michaelmas, 7—8 Edward I.; cf. Placitor. Abbrev. 270)[1]. Unfortunately so many of the original rolls have been lost and the indications of the British Museum MS. are so general that it was impossible to trace out most cases in the way of such direct comparison.

But there were other channels. The Patent Rolls give the appointment of justiciaries to try particular assizes, and the Fine Rolls record payments received for such appointments by the Exchequer. These documents give the approximate time of another marginal case. Fol. 276 *a* has the following entry opposite a Yorkshire assize of Martin of Pateshull: "N[a] casum Hugonis filii Wymund de Ralegh primogenitum et postnatum qui fuit infra etatem de concordia inter eos facta, *coram H. de Bratton.*" Wymund of Ralegh was still alive in 1256, as is shown by a final concord between him and Warin of Ralegh in the King's Bench (Feet of Fines, Devon, Henry III., N. 492). In 1259 Bracton is appointed to try an assize of *mort d'ancestor* between Hugh and Warin of Ralegh, and that is most probably the case hinted at in our MS. (Patent Roll, 43 Henry III., membr. 13, dorso)[2]. In most instances the connexion could not be so clearly ascertained. Still, the examination of the Patent Rolls is instructive even where it does not lead to the absolute identification of particular cases, because it narrows the range of possible identification to a very small area in space and time. To put it briefly, they point to Somerset, Devon, and Cornwall as the counties, to Henry of Bratton as the judge, and to the years 42—46 of Henry III. as the time with which the cases of Ralph of Arundell, Corbyn, and the heirs of Hokesham, mentioned in the note-book, are connected. Of course, there is evidence to show that the earlier parts of Bracton's treatise were composed before 42 Henry III., but the work as it presents itself does not look at all like a completed one, and nothing shows that it was not in process of elaboration in some of its parts as late as 46 Henry III., and even later.

Last, but not least, there is a definite trace left by the marginal cases of the note-book in one of the most important

[1] See below, p. 102. [2] See below, p. 101.

MSS. of Bracton's treatise. It may have struck many students of the author that parallel to the carefully arranged quotations from early rolls there runs a string of irregular references to later cases. A trial is mentioned, for instance, to which the heirs of John of Munmuth were parties. Now the said John died immediately before 1259[1] (Roberts, 'Calendarium Genealogicum,' i. 73), and so the casual illustration has been taken from a case fresh in the remembrance of the author when he composed the corresponding part of the treatise. The case Roger de Regni *v.* Robert de Shute, entered as a heading to one of the paragraphs in the editions, is nothing but a similar side reference to a trial which may be still read at the Record Office on an assize roll of Bracton for 1254 (Coram Rege, Henry III., N. 96, m. 4). And so in the work itself we have the like marginal illustrations as in the note-book, and a careful collation of the MSS. of Bracton would bring them easily out in their original character of side-notes. Now, one of the most interesting among the Bracton MSS., Digby 222 in the Bodleian Library, of which that wondrous production called Sir Travers Twiss's edition of Bracton does not take the slightest notice, gives as marginal references two of the most conspicuous illustrative instances of the note-book, the Corbyn case on the subject of warranty and the Ralph of Arundell case.

Summarizing briefly the evidence in respect of Bracton's connexion with the note-book in the British Museum, I lay again stress on the following points: 1. The abstracts from rolls in the Add. MS. and the rolls which served as material for the drawing up of the treatise are substantially the same. 2. There are passages in the treatise which even in their wording connect themselves with notes in the Add. MS. 3. The illustrative references in the Add. MS. can be traced in some instances to Bracton's own practice, and in two cases are found to recur in MSS. of Bracton's work.

My paper has grown to such an inordinate length already that I do not venture to hint at the importance of the matter collected in the British Museum MS. It seems sufficient for the present to say that the note-book gives a copious and careful selection of cases from the early practice of Henry III.'s time, and that many of the rolls from which it was compiled have been

[1] Corr. 1257. See below, p. 38, note 7.

lost since. I intend to discuss some of the material questions arising from the study of these abstracts in the new quarterly which the Oxford Law School is going to start next year[1]; but even now I think it may be said without fear of going wrong that the integral publication of the MS. would afford the most fitting sequel to Palgrave's editions of Richard I.'s and John's rolls.

I must not omit before concluding to thank Mr W. Selby, of the Record Office, for the kind and valuable help which I had from him on several occasions during my inquiry.

PAUL VINOGRADOFF.

[1] *Law Quarterly Review*, vol. I. p. 189.

NOTE ON THE CLASSIFICATION OF THE EXTANT PLEA ROLLS.

The yet extant Plea Rolls of Henry the Third's reign are arranged at the Public Record Office in three classes, (1) Coram Rege Rolls, (2) Assize Rolls, (3) Tower Assize Rolls or Tower Coram Rege Rolls. This arrangement has been determined partly by the fact that in time past some of the rolls were preserved in the Tower and some at Westminster. That a roll is now found in a particular class, is by no means a sure indication of its real nature, for instance, it may happen that one of two duplicate rolls will be among the Coram Rege Rolls and the other among the Assize Rolls. Therefore in citing a roll as Coram Rege Roll No. 91, Assize Roll M. 2, 3, 1, or Tower Roll No. 4, I imply nothing as to the character of the roll, but merely give the reader a name whereby he may obtain the document to which I refer. In citing a particular membrane of a roll, I refer to the figures which have been set upon its membranes by a modern pencil.

MSS. OF BRACTON'S TREATISE.

NOTE :—The following MSS. of Bracton's treatise I have occasionally consulted, and some of them are referred to in my Introduction by means of the letters here assigned to them. It should be understood however that the order in which they are here mentioned, is not an order of merit or of date, also that at least twelve other MSS. are known to exist, at seven of which, those in Lincoln's Inn, Gray's Inn, the Temple and Trinity College, Cambridge, I have glanced.

In the British Museum.

MA = Royal 9 E. xv.
MB = Add. 11,353.
MC = Add. 21,614.
MD = Add. 24,067.
ME = Harl. 653.
MF = Harl. 656.
MG = Harl. 763.
MH = Harl. 817.
MI = Harl. 1,242.
MK = Harl. 3,416.
ML = Harl. 3,422.
MM = Add. 32,340.
MN = Stowe 722.

In the Bodleian Library.

OA = Digby 222.
OB = Rawlinson C. 160.
OC = Rawlinson C. 159.

In the Cambridge University Library.

CA = Dd. vii. 6.
CB = Dd. vii. 14.
CC = Ee. iv. 4.

INTRODUCTION.

§ 1. *Of Bracton his times and his work. Generalities.*

THAT Bracton's book on the laws of England is a good and a great book very worthy of careful study, is no novel opinion, but rather an old tradition which has stood the test and received the sanction of modern scholarship. Bracton's book marks and makes an epoch.

In truth that book both marks and makes a critical moment in the history of English law, and therefore in the essential history of the English people. About the middle of the thirteenth century, the time when Bracton was at work, our common law, the law which was to be common to England and vast lands of which he never dreamt, was rapidly and definitely assuming the shape that it was to keep but little changed for long ages. Yet a little while and Parliament would have come into being as the one proper organ of all legislation, hampering by its masterful but fragmentary and intermittent statutes any further development of unenacted law, jealous of the royal power, jealous lest new writs, new forms of procedure, should mean new laws made without its approval. At latest before the death of Edward the First the main outlines of the common law would, we may say, be drawn once and for all; an intricate superstructure might yet be reared, the ground plan could no longer be changed. But during the first part of the reign of Edward's father, the king's judges must have enjoyed such an opportunity of moulding a powerful, practical scheme of law as has rarely been given to men. Past history, the Norman conquest, the vigour of king after king, the ill success of Power and freedom of king's court under Henry III.

every revolt, had decided that we should have one common law for the whole of England, that it should be the law of one great central court and that court the king's. Very truly had the king become the fountain of justice. Other springs there had been and were, communal, seignorial, ecclesiastical, the ancient courts of the shire and the hundred, the manorial courts, the Courts Christian. These, had our history been not quite what it was, might have become effective and independent sources of English law, or of manifold local customs. As it is, we, accustomed for centuries to our centralized royal justice, are apt to make too light of these old courts, to think of them only as they were in the last stage of their decay. In Bracton's day they yet flourished. The feudal jurisdictions were dearly prized and obstinately defended; the Great Charter had but lately protected them against royal invasion. Attendance at the county court was a burden, but a burden that knights of the shire would willingly bear if thereby they could check the proceedings of the king's professional judges. The tribunals of the church were zealous and ambitious, eager for work. Still by one means and another, by royal writs invented as circumstances required, the king was getting into his hands a monopoly of justice, was holding himself out as ready to intervene at any stage of any action and to draw the matter into his own court. We can not quite say of him in the well-known words that he was "over all persons and in all causes "ecclesiastical as well as civil within his dominions supreme." That was not the theory of the time. The ecclesiastical courts were not his courts, nor had he power in spiritual matters. That those courts obtained and retained exclusive cognizance of such (as they seem to us) purely temporal affairs as testamentary causes, is enough to show, were other proof wanting, that royal justice had at least one active rival. There were two swords; the king grasped but one. Still he had succeeded in setting to the ecclesiastical jurisdiction definite bounds. These bounds if we think them wide, were none the less thought far too narrow by the clergy of the day and were only maintained by the unremitting

vigilance of the royal judges. But, for all this, the king's justice had a large field and behind it was power not to be withstood.

Royal power limited by law.

If however history had decided that the English kingship should be a very strong kingship and in particular that the king should have an active control over all the justice in his realm, still a strong kingship is no absolute monarchy, and history had decided also that the king must judge according to law. Whatever danger there may have been that his court would be merely a machine for enforcing his personal will and pleasure was at an end, at least for a time. Happily, as it now may seem to us, the vast power of Henry the Second had come to the hands of John. Tyranny had provoked revolt and the charter was won. Happily again the revolt was not too successful, and happily the crown passed from John to a boy but nine years old. The minority of Henry the Third made it possible to distinguish between the impersonal 'Crown' and the little crowned head. Law could not be just what pleased this child. Quod principi placuit legis habet vigorem:—without much untruth this phrase might be applied to his mighty grandfather, though rather perhaps as a statement of plain matter of fact, than as a theory of the English kingship. Under Henry the Second, whose will had a way of making itself law, the writer whom we call Glanvill could at least hint that these famous and to a mediaeval lawyer almost sacred words were literally true in England[1]. Bracton plays with them and turns their edge. Alongside the king, indeed above the king stands the royal law that makes him king[2]. This let the king obey; so doing he loses no whit of majesty or power, becomes subject to none but himself. Our Blessed Lady, even our Blessed Lord were thus obedient to the law for man[3]. A constitutional theory not yet embodied in definite institutions found expression for a while in the glittering paradox that submission to self-imposed law is the supreme feat of God's Omnipotence—

> Non est inpotentia sed summa potestas,
> Magna Dei gloria, magnaque maiestas[4].

[1] Glanvill, Prologus.
[2] Br. f. 107.
[3] Br. f. 5 b.
[4] Wright, Political Songs (Camden Society), p. 106.

A little later, perhaps before Bracton had done writing, something less mystical had become received, or at least probable, doctrine. The shiftless policy of the self-willed king set men thinking:—the king has peers and he who has peers has superiors[1]. But from the time when John, forced into a solemn covenant to deny right and justice to none, had set his will against his word and died a miserable death, (and it was just to this moment that Bracton carried back his search for precedents,) above the king there was evidently law[2].

The Judges are learned.

From the same time it is that we first hear of judges in the king's court who are learned, professionally learned in the law of the land. It was still the part of all who aspired to be aught in church or state to do a good deal of judging. Not only in their own manorial courts but as *justitiarii Domini Regis* assigned to take assizes or hear pleas of the crown, earls, barons and knights, bishops and abbots decided causes and passed judgment. But by slow degrees the king's court (*curia*) was becoming distinct from the king's council (*concilium*); the work of hearing lawsuits was being separated from the general business of governing or helping to govern the country, and it was felt that study and book-learning, something more special than an ordinary experience of public

[1] Br. f. 34.

[2] The passages in which Glanvill (Prologus) and Bracton (f. 107) introduce the *Quod principi placuit* have often been discussed. It has been supposed that Bracton mistranslated the words. They, it will be remembered, run thus:—sed et quod principi placuit, legis habet vigorem, cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem concessit (Inst. I. 2. 6). Bracton is arguing that the king ought to rule according to law. This, he urges, is not contrary to the famous text, quod principi placuit legis habet vigorem, because that text goes on to say, cum lege regia quae de imperio eius lata est. Here he stops his citation, and some think that he takes *cum* to be a preposition. The state of his text is at present so bad that the loss of a few words may perhaps be suspected; but I have looked fruitlessly at many MSS. in hope of finding a variant. If however, as seems likely, he does take *cum* as a preposition it does not necessarily follow that he is guilty of a stupendous blunder. It is incredible that he should not have known and been able to construe the last words of the passage. I see here rather a playful perversity than a mistake. Similar dealings with the text of a book yet more sacred than the Institutes were not uncommon, half-sportive half-serious twistings of holy writ. See Selden, Diss. ad Fletam, cap. 3. sec. 2, and Hallam, *Middle Ages*, ed. 1837, vol. 2, p. 459.

life, were needful for those who term after term were to sit in a certain place, in aliquo loco certo, and declare the law. Let us indeed remember, that Englishmen have never admitted in theory or in fact that none but a lawyer is fit to judge his fellows. Theoretically our highest court of law is an assembly of lords spiritual and temporal, while very practically at quarter sessions and petty sessions is much justice done by those whom lawyers call lay-men. Throughout the middle ages the unprofessional element in our judicial constitution was strong and healthy, keeping common law at one with common opinion, preventing any wholesale adoption of an alien jurisprudence. But still from the beginning of Henry the Third's reign there were in the royal court learned judges, most of them ecclesiastics, who were making for themselves fame merely as great judges. Foremost among them there was Martin Pateshull, 'a man of 'wondrous wisdom and very learned in the law of the land[1].'

Law a subject for study.

And 'the gladsome light of jurisprudence' (to use Coke's fine phrase[2]) had dawned in England as elsewhere, an idea of law as of a reasonable system of connected principles, providing in advance for all possible cases, a proper subject for doubt, disputation, proof,—and yet no mere ideal existing only in the speculations of doctors and scholars, but the very law of the land, of which ordinances, charters, writs, decisions, ancient custom, wonted procedure, were authoritative though partial manifestations. Practice and theory had grown side by side reacting on each other. The concentration of justice in the king's court, the evolution of common law, were but one process. That the development of legal doctrine was rapid, we may easily see as we pass from that strange dark book the Leges Henrici Primi, through Glanvill to Bracton. But theory did not outgrow practice. Much had been and was being learned from civilians and canonists. The canon law was of vital importance to all Englishmen, to the laity as well as the clergy. The king's professional judges were, as already said, ecclesiastics deeply interested in the church's

[1] Mat. Par. Chron. Maj. (ed. Luard) vol. 3, p. 190.

[2] Co. Lit. 395 a.

law. Appeals to Rome were not uncommon and the English suitor might have to secure the services of the best Italian jurists, of Azo himself. But cosmopolitan tendencies were held in check by practical necessities. The king's justice was conquering and to conquer, but a regard, at least an outward regard, for ancient tradition, an adherence to settled forms and precedents, were conditions of its success; nor could it always succeed without concession and compromise. Our English lawyers seem from the outset to treat the Roman law much as our church treats the Apocrypha; it is instructive but not authoritative; in other countries these leges scriptae prevail; our leges are non scriptae; English law is English.

Growth of law not hampered by procedure.

On the other hand the common law was not yet a struggling captive netted in the meshes of procedure. What in after times made it the most elaborate of labyrinths was the closed cycle of original writs, the catalogue of forms of action to which naught but statute could make addition. Now during the earlier part of the thirteenth century the king's general power to make new writs seems unquestioned, though protest, armed protest, may be made against a particular use of that power, specially if it interferes with the feudal jurisdictions. And many new writs must have been made. Of some we know the history. This was made by William Raleigh[1], that by Walter of Merton[2]. But as the struggle for a parliament drew near, as King Henry forced on that struggle by attempting to govern without chancellor, treasurer, or justiciar, complaints of new and illegal writs became loud and the general principle was drawn into debate[3]. Bracton, writing some few years before the open outbreak, has left us a transitional doctrine. New original writs can be made as occasion may require, for wrong must not be without remedy; in strictness such new

New writs.

[1] Br. f. 438 b.

[2] The Old Natura Brevium (f. 122 b) ascribes to him the *Quare eiecit infra terminum* as to which see Br. f. 220. See also the entry in Rot. Cl. vol. 1, p. 32 b, which makes the writ of *entry sur disseisin* a writ of course. The whole system of writs of entry was rapidly developed without legislation.

[3] Mat. Par. vol. 6, p. 363; Ann. Burton. (Ann. Monast. vol. 1), p. 448.

writs should be approved by the whole kingdom, that is, by the magnates; but the consent of the magnates may be taken for granted; they consent if they do not expressly dissent, and it behoves the king to give remedy for every wrong[1]. A fiction of this kind could not be permanent and events decided that the requisite consent of the common council of the realm should be a real consent. Thenceforward the common law was dammed and forced to flow in unnatural, artificial channels. The supremacy of Parliament may have been worth the price paid for it; none the less the price was high.

The time for a great book.

The state of things at which we have glanced, the powerful court, the yet flexible law soon to lose its flexibility, will, if duly considered, seem very worthy to be the theme, very likely to be the cause, of a great book, one which in declaring law will make law for ages, which will leave a distinct mark on national history, which will be read with interest when six centuries have passed away.

The praises of Bracton.

And the man who came to the work was able, very able we must say if we compare him with his successors. We look back at them and him and he stands a head and shoulders taller than them all. Just so long as his influence was powerful lawyers could produce such fairly readable books as those which we call Britton and Fleta; serviceable epitomes, what is good in them is Bracton's. One fact about them let us note. Bracton, we may safely say, did not fulfil the whole of his splendid plan. In the middle of an account of the writ of right his book stops short and then we have what looks like a brief fragment on the personal actions. Britton and Fleta carry their accounts of the writ of right to the same point, and then they too stop short. No one could finish that book: there was no one to bend the bow fallen from the master's hand. There come things which hardly may be called books, the Henghams, Fet Assavoir, the Old Natura Brevium, the Novae Narrationes, useful things in their day for practitioners, but showing no interest in legal principle, no grasp of law as a whole, merely a care for the

Compared with his successors.

[1] Br. f. 414 b; compare Fleta, p. 76, 77.

details of practice, for the tithes of mint and cummin. In its last hours the fifteenth century is redeemed by Littleton's Tenures. Against "the most perfect and absolute "work that ever was written in any human science[1]" nothing shall here be said, for it is a masterpiece; but still it is a small thing to set beside the heroic work of Bracton. Littleton, again, had neither rivals nor imitators. English lawyers could make abridgements; write books they could not or would not. As to the chaos of Coke it is bad chaos as it stands; what it would have been but for Littleton and Bracton one does not like to think. It is strictly true what Lord Campbell says, and Lord Campbell cannot be charged with mediaevalism: Bracton "was rivalled by no English juri-"dical writer till Blackstone arose five centuries afterwards[2]." Twice in the history of England has an Englishman had the motive, the courage, the power to write a great readable, reasonable book about English law as a whole[3].

Comparison with foreign writers unprofitable.

We may more easily and more profitably compare Englishman with Englishman, than Englishman with foreigner. In the thirteenth century the task for the writer on law was very different in different countries. Bracton was placed in favourable circumstances. He had to describe the most vigorous system that Europe could show. As an engine of masterful justice for the government of a large land, the court of our king had not its equal. Nor was the Englishman hampered by dead texts. He had but to describe what was really being done day by day and done on a large scale. It is almost useless therefore to attempt a weighing of his merits against those of his French and German contemporaries, Philip Beaumanoir, for example, or Eike of Repkow, or against those of the Italian doctors. Still we may take this from foreigners, that when we set our legal literature beside that of continental Europe it is not of Bracton that we need be ashamed.

[1] Coke's Preface.

[2] *Lives of the Chief Justices*, vol. 2, p. 62.

[3] If to any one what is here said of Bracton seems extravagance, he may be asked to think of some of Bracton's contemporaries, of Edward the First, Simon de Montfort, Robert Grosseteste, Roger Bacon, Matthew Paris; are they not greater than their successors?

If for one moment we set his book beside the Customs of Beauvais and the Saxon Mirror one fact worthy of note stares us in the face. The Englishman's work both in its general structure and in many details has been influenced by Roman jurisprudence. Really if we place ourselves in the thirteenth century and look only at the surface of things, it must seem very likely that England will soon adopt Roman law as a whole, while into Northern France and Germany it will make its way but slowly or never. After the event we can see why such a prediction would be foolish. The development in England of a centralized royal justice was rapid, precocious. Before the end of the thirteenth century the system with its stubborn writs and formulas had become too osseous to be much modified by new outlandish learning. And looking closer we see that Bracton had no intention of supplanting English by Roman law. It is Rationalism rather than Romanism that he learnt from Azo's book, and this fact that at an early date English law was rationalized by an able man, is not the least among the causes which protected us against Romanism in the following centuries. Bracton and Roman Law.

Trying to state in general terms, (this is no place for particulars,) what was Bracton's debt to the civilians we may put it thus:—First he had learned certain wide principles of jurisprudence, had found some of the highest premisses of all civilized law expressed in neat and accurate phrases. For these, at least for some of these, the England of his time was ripe. They are not, he might argue, specifically Roman; the Romans themselves regarded them as common to all mankind; they are dictates of reason implicit in all law. His debt to the civilians estimated.

> Justinian's Pandects only make precise
> What simply sparkled in men's eyes before,
> Twitched in their brow, or quivered on their lip,
> Waited the speech they called but would not come[1].

Then there are instances in which rules that are less general and more specifically Roman are adopted, or rather proposed, as solutions for concrete cases. For the more part

[1] Browning, *The Ring and the Book*.

this is done very modestly and by way of suggestion. There being no English authority in point, why,

> Imperious Caesar dead and turned to clay
> Might stop a hole to keep the wind away.

But his main debt is less palpable, for what he has converted to his use is spirit rather than substance, not these or those rules, but a method of reasoning about law, of perceiving the interdependence of rules, of making them take their places as members of a body. He is at his very worst when he copies matter from Azo, as he does very freely in those parts of his book, which, being the first, are unfortunately the best known. He is there dealing with high generalities about things and persons; to these English law had not yet ascended, and (even when allowance has been made for the blunders of mediaeval copyists and the negligence of editors) we are forced to say that his copyings from Azo are not always very intelligent; he fails to take point after point made by the Italian master. Only when he comes to more concrete matters do we see the best that he has learned from abroad. There is no more copying; he has ample raw material of home growth; it is to be found in the rolls of the king's court; but by means of ideas and distinctions which have come to him from beyond seas he gets principle out of precedent and weaves a rational text. A parallel as good as most historical parallels is ready to hand. Within our own century a great foreign civilian has left his mark on some of the very best of our English text-books, not making them any the less English, only making them more reasonable by having placed their writers at a standpoint outside the English system, a standpoint whence a wood might be seen, not merely a quantity of trees. Azo was the Savigny of the thirteenth century[1].

Bracton's English authorities.

It is to be regretted that no one has yet printed a good text of Bracton alongside a good text of Azo. Only when this is done, shall we fully understand the influence of Roman upon English law. But it is much more to be regretted that

[1] When I wrote the above I had not yet read Mr Scrutton's careful estimate of Bracton's debt to the civilians (*Roman Law in England*, pp. 79—121), which seems to me very just.

no one has printed Bracton's English authorities, those five hundred cases which he cited from the rolls. Many of those rolls are yet in existence and surely this matter was worth some pains. Nothing is more remarkable in Bracton's book than his profuse references to decisions. His law is case law. Now this is remarkable. It is very seldom indeed that any other mediaeval writer, Fleta, Britton, Hengham, Littleton, ever cites a case, and citations in the Year Books are out of the common: seldom is there anything more definite than a vague "It is so in our books." Shall we say that Bracton foresaw what after the lapse of centuries would become the most distinctive characteristic of English law? It would be folly seriously to attribute to him any such marvellous power of prediction; but the fact remains, his law is case law. In dealing with concrete matters he appeals not to Azo, nor to Ulpian, nor again to Reason or Nature, but to this and that case adjudged by Martin Pateshull or William Raleigh. The rolls of the king's court, therefore, and in particular the rolls of Pateshull and Raleigh should have an interest for us. To say nothing of the light they throw upon every detail of mediaeval life, they contain the authorities, and it well may be, ultimate authorities for many a rule of the common law which hitherto has been traced no further than Bracton's unverified assertion. However to print these rolls in full would be too large, too costly a task for private enterprise. We have been embarrassed by our riches, our untold riches. The nation put its hand to the work and turned back fainthearted. Foreigners print their records; we, it must be supposed, have too many records to be worth printing; so there they lie these invaluable materials for the history of the English people, unread, unknown, almost untouched save by the makers of pedigrees. Now to select important cases from these rolls would be difficult. The endeavour, likely enough would fail, for so much of our old law has been utterly forgotten that perhaps there is no one now competent to say what are the important, the leading cases. A false measure, an unfounded theory might well make the selection unfair and give us the anomalous instead

His law is case law.

of the normal. What then would we not give, such of us as really care for the history of our law, could we find the selection made for us by some thirteenth-century lawyer, could we find some note book in which such a lawyer had copied the cases which were the most interesting to him and the men of his time, some book in which he jotted down his own remarks on those cases? What would we not give could we indulge the hope that the maker of that book was Bracton?

This Note Book wanted.

Such a book chance has preserved.

§ 2. *Of Vinogradoff's discovery.*

This Note Book found.

In the summer of 1884 Paul Vinogradoff, Professor of History in the University of Moscow, was in England seeking materials for mediaeval history. A study of the English manor led him to a study of Bracton's text and he went behind that text to Bracton's authorities. He then heard, I believe from Mr Selby of the Public Record Office, of a MS. at the British Museum known as MS. Additional 12,269. Carefully reading it he came to the conclusion that it was closely connected with Bracton's work and indeed was probably Bracton's own note book. This discovery he published to the world in *The Athenaeum* for 19 July, 1884; some weeks earlier I had the pleasure of hearing about it from his own lips. His letter to *The Athenaeum* is printed at the beginning of this book. Hereafter I must repeat its arguments at greater length. But at once I will say that so far as I am aware though the MS. had been used by others, the credit of perceiving its value in the history of law was wholly due to Vinogradoff. At least it should be understood that I claim no credit. I have but worked on the lines indicated by him in the letter which he published.

Valuable even if it be not Bracton's.

As I am about to begin an argument, or rather a statement of evidence, which must needs be long and intricate, tending to prove that the MS. in question is what on my title page it is called, namely Bracton's Note Book, I should like to say at once that in my own opinion the value

of this book does not depend wholly or even chiefly on the success of my argument. It seemed to me that Bracton's or not Bracton's, the Note Book ought certainly to be printed; this will hardly be denied by any, and if the version of it now published be a fairly accurate and useful version, then I have not failed in what was my main endeavour. If it be Bracton's so much the better. The evidence as to this is all of an indirect kind, consisting of many small details and minute coincidences. Before we can weigh it we ought to know some particulars about Bracton himself, about his selection of authorities, we ought to form some idea as to what would have been in his note book if a note book he had[1].

§ 3. *Of Bracton's life*[2].

Of the man himself there is seemingly little to be known. Little known of his life. We might indeed collect a large number of small facts about him, for his name occurs very frequently during some twenty years on the Fine, Close and Patent Rolls. But with few exceptions these facts would be all of one not very interesting kind; he is commissioned to take this, that and the other assize of mort d'ancestor or novel disseisin. He can have played no leading part in the exciting history of his time. It was a time of great chroniclers; the greatest of our mediaeval lawyers, the greatest of our mediaeval historians, were contemporaries; Matthew Paris died a few years before Bracton; yet of Bracton Paris has nothing to tell; Paris was writing the history of the present, Bracton was making the history of the future.

[1] It will be necessary to deal in dates and, as the original documents usually refer to the regnal years, it will be well to remember that Henry III. was crowned on 28 Oct. 1216. Thus Easter Term A. R. 3 = Easter Term 1219, and a case de Termino S. Michaelis A. R. 10° incipiente 11° is a case from Michaelmas Term A.D. 1226.

[2] I must acknowledge in a general way my debt to Dugdale, Selden, Madox, Güterbock and Foss, to the prefaces of Sir Travers Twiss, to the article on Bracton by Mr J. M. Rigg in the Dictionary of National Biography, to the Excerpts from the Fine Rolls edited by Mr Roberts, and above all to the MS. calendars of the Patent and Close Rolls in the Public Record Office, on which I have often relied.

His name not Bracton but Henry of Bratton.

One thing is clear. His name was not Bracton but Henry of Bratton. It is written a very large number of times upon contemporary Rolls and Feet of Fines and the only variant for Bratton that is at all common is Bretton. Certainly most of the MSS. of his treatise that I have seen give a clear Bracton; but their readings of proper names are extremely corrupt; one has, for instance, to recognize the English villages of Hatfield, Swanscombe and Itteringham under such monstrosities as Hecfenur, Snanthanis and Judlibam[1]. There is no room for doubt that the text writer was the judge whose name appears on roll after roll, or that the judge's name if not Bratton was Bretton. However Bracton he has been for centuries, and so let him be to the end.

A Devonshire man.

He has been claimed by two Devonshire villages, Bratton Fleming near Exmoor, Bratton Clovelly near Dartmoor, also by Bratton Court in the parish of Minehead on the Somersetshire side of Exmoor. There is but little evidence in favour of any of these claims; there is another Bratton in Somersetshire, Bratton Seymour near Wincanton, there are Brattons in Shropshire and Wiltshire, Brettons in Yorkshire and Wales; but there are good reasons for connecting him with Devonshire. In 1212 a William Raleigh was presented by the king to the church of Bratton Fleming[2]; he may have been the William Raleigh whose judgments Bracton has made immortal and Bracton may have been his pupil. As proof of Bracton's connection with Bratton Court, a tomb in the church of Minehead has been shown as his, but it seems beyond doubt that he was buried in the nave of Exeter Cathedral where long afterwards Bratton's altar stood, Bratton's bell was rung, and Bratton's mass was chanted. We are thus absolved from believing that he had, like the

[1] OA and a few other MSS. of the treatise give the name as Bratton. I refer to f. 188 b where he takes his own name as an illustration. As to the passage on f. 1, almost all MSS. make him speak of himself simply as *Ego talis*. The Devonshire Assize Rolls known as Coram Rege Rolls 90 and 96 must have come under his own hand, and the corrections on them are very likely in his handwriting; his name throughout is Bratton. There was a contemporary judge, William le Breton; his name however is invariably spelt with a single *t*, while Henry always has *tt*.

[2] Rot. Pat. vol. 1, p. 93 b.

skeleton in the Minehead tomb, an abnormal number of teeth[1].

His place of burial.

The best proof of his burial in the Cathedral is given by two interesting deeds relating to the manor of Thorverton. That manor lies near the Exe half-way between Exeter and Tiverton. Henry the Second had given it to the monks of Marmoutier[2]. In 1272 they conveyed it to John Wiger, (probably a member of the family whose name is borne by Broadwood Wiger a village hard by Bratton Clovelly,) subject to a charge of six pounds a year for maintaining two chaplains to celebrate masses in Exeter Cathedral for the soul of Henry of Bratton late chancellor of that church. Five years afterwards Wiger conveyed the manor to the Dean and Chapter, to provide at the altar in the nave of their church before which Henry of Bratton was buried, masses for the souls of the kings of England, of Henry of Bratton and of John Wiger the grantor[3]. Edward the First seized the manor as an escheat on Wiger's death, but, the conveyances being proved, the Chapter recovered possession of it[4]. The conveyance by the monks of Marmoutier was made in consideration of a sum of 392 marks described as paid to the monks out of the goods of the late chancellor and the goods of John Wiger by the hands of the said John Wiger. From this it would seem very likely that Wiger was the executor of Bracton's will, and that in pursuance of his will the chantry was endowed[5].

His last will.

His worldly possessions.

It is in the west country, more especially in Devonshire, that we find him active both as judge and as churchman, and the little that we can hear about his worldly possessions bears out the supposition that there was his home. That we should hear but little is to his credit. His earnest denunciations of judges who make a profit of their office are not vague generalities[6]; they have point enough when read in the light of contemporary history. Some of his fellows became very rich,

[1] See the account of Minehead in Murray's Guide to Somersetshire; Collinson, History of Somersetshire, vol. 2, p. 31; *Notes and Queries*, 3rd Series, vol. 9, p. 298.

[2] Monasticon, vol. 6, p. 1097.

[3] Twiss, vol. 2, p. lxviii.

[4] Rot. Parl. vol. 1, p. 3.

[5] By the kindness of Mr Hampshire the Librarian of the Cathedral I have been allowed a copy of the conveyance which is still among the title deeds of the Chapter.

[6] Br. f. 2, 106.

scandalously rich if we may trust Matthew Paris; Thomas Multon[1] for example and Robert Lexington[2]. Henry of Bath, the judge with whom Bracton is most commonly associated, amassed vast wealth by discreditable means; one of his companions, (perhaps it was Bracton,) charged him openly with taking bribes; he could afford to pay a fine of two thousand marks[3]. Still there are some signs that Bracton had other means of livelihood besides the judicial salary of forty pounds, though such signs are of uncertain value since he may have had a namesake. Thus when in 1254 John of Munedene confesses that he owes eighty-four marks to Henry of Bratton, apparently the price of crops grown on land at Clopton in Suffolk, we cannot be quite sure that the creditor is our Bracton[4]. On the other hand we may well see him in the Henry of Bretton to whom in 1261 Walter Raleigh and Isabella his wife grant for life the manor of Tykenbrede in Cornwall[5]. This manor we may perhaps identify with a spot called Tuckenbury which lies between Linkinhorne and Liskeard[6]. Again we may see him in the Henry of Bratton against whom as tenant of the manor of Saunton in Devon, William of Punchardon and Ermengard his wife bring an action in 1253 for the dower whereof she was endowed by her former husband Thomas of Saunton[7]. The manor of Saunton Court lies in the parish of Braunton, a little south of Morthoe and the wild north coast, a few miles from the village which still bears the name of the family of Ermengard's second husband, the village of Heanton Punchardon. Will the reader remember this lady's not very common name—Ermengard wife of William of Punchardon? She will be of use to us hereafter.

His connection with the Raleighs.

Ermengard of Punchardon.

With many of the Devonshire landowners Bracton must have been familiar. Year by year for twenty years he went

[1] Mat. Par. vol. 4, p. 49.

[2] Mat. Par. vol. 5, p. 138.

[3] Mat. Par. vol. 5, pp. 213, 223, 240.

[4] Tower Assize Rolls, No. 21, m. 26. The debt is secured elaborately by sureties and penalties.

[5] Feet of Fines, Cornwall, A. R. 45, No. 3. This is a noteworthy example of careful conveyancing.

[6] I owe this suggestion to Mr Leslie Stephen.

[7] Coram Rege Roll, No. 93, m. 27. I have not been able to trace this action further, but the manor seems to have long remained in the family of Saunton. Risdon, *Description of Devon*, ed. 1714, vol. 1, p. 111.

among them as a judge of assize, heard their causes, associated them with himself as justices. Raleighs and Punchardons, Traceys and Beaupels sat with him on the bench at Exeter, Morchard, Moulton, Torrington, Chulmleigh, Barnstaple, Umberleigh, for assizes were taken at many places[1]; no wonder then if some of them were his friends and he had his home among them. Wife or child he can not have had for a reason now to be given.

Like most of the great judges of his age he was an ecclesiastic, though it is only in the last years of his life that, to our knowledge, he had any benefice. In the thirteenth century the chapter of Exeter had among its members more than one famous lawyer. At one time the great William Raleigh was its treasurer[2], at another Ralph Hengham was its chancellor[3]. Bracton became archdeacon of Barnstaple on 21st Jan. 1264[4]; after a few months he resigned the archdeaconry for the chancellorship of the cathedral which was conferred upon him on the 18th May 1264[5]. In the autumn of 1268 that office was given to another and new appointments were made to prebends in the cathedral of Exeter and the collegiate church of Bosham which are described as those of Henry of Bratton[6]. We may conclude from this and some other evidence that he had but lately died. Already in February 1272 the manor of Thorverton was subject to the charge for maintaining masses for his soul.

His career as an ecclesiastic.

His death.

That he studied law at Oxford, was professor, doctor utriusque juris and what not, has been repeated many times with much confidence. The sole foundation for the whole story seems to be the bare assertion of Bishop Bale, a flimsy foundation indeed[7]. That there was already a flourishing law school at Oxford is certain[8], that Bracton may have been of

Did he study at Oxford?

[1] See Bracton's two Assize Rolls, known as Coram Rege Rolls, No. 90 and 96.

[2] Le Neve's *Fasti*, ed. Hardy, vol. 1, p. 414.

[3] Ibid. p. 417, 409.

[4] Ibid. p. 405.

[5] Ibid. p. 417.

[6] Ibid. p. 417; Twiss, vol. 2, pp. ii.—xiii.; Oliver, *Lives of Bishops of Exeter*, p. 281.

[7] See as to this myth the article on Bracton by Mr J. M. Rigg in the Dictionary of National Biography and the authorities there cited.

[8] See Chronicle of Evesham (Rolls Series), p. 267.

it, is not unlikely but quite unproved; but he may well have got his law, as some of his greatest contemporaries got theirs, namely as a clerk in the king's court or the king's chancery. To suppose that he made his fame by "practising at the bar" would probably be an anachronism.

His judicial career.

For more than twenty years before his death he was a judge and during at least some part of that time he held pleas before the king himself. The evidence of this matter can hardly be weighed unless we know something of the judicial organization of the time. The king, who was now at Westminster now elsewhere, kept by his side a few professional judges who heard the pleas which followed the king. Other professional judges sat during term time on 'the Bench' at Westminster and heard the Placita de Banco. We ought not to think of these two sets of judges as forming two such distinct colleges as existed in later days; a judge who was at one time with the king would at another be on the Bench at Westminster; still the king seems generally to have chosen as his personal attendants judges of experience, and probably it was reckoned promotion when a judge was selected to hear cases, which in theory or fact were litigated coram ipso rege. At irregular intervals, five, six, seven years an eyre for all pleas (ad omnia placita) would be instituted in the counties. For each county two or three of the professional judges would be commissioned along with some prelate or baron and knights of the shire. Besides these general commissions, there were special commissions for the possessory assizes; generally one of the professional judges was empowered to hear this, that and the other assize of mort d'ancestor or novel disseisin, and was trusted to choose his own associates; a very large number of these special commissions was issued every year. The easy work of delivering the gaols was done annually with more or less regularity, but the professional judges were seldom troubled with this.

Nature of the evidence.

Now as to the names of the judges who go on an eyre, or who are sent to take assizes, there is no lack of information; they occur on the Patent, Close and Fine Rolls. Also there is little difficulty in discovering who sat on the Bench at

Westminster in any given term. 'Feet of fines' exist by the thousand, and the judges before whom the concord was made are always named in them. But as to the judges who were with the king, the task is harder. Whether as yet they were appointed by any enrolled document seems very doubtful; the Plea Rolls seldom name them; and it is very rare to find the record of a fine levied coram ipso rege. This last fact will not surprise us, for in after days the Court of Common Pleas (and this 'the Bench' was coming to be) was the proper place for real actions and consequently for fines. Still such records do exist, just in sufficient number to prove, were other proof wanting, that while certain judges were at the Bench certain others were holding pleas before the king himself[1].

Employment as justice in eyre.

Now the first known fact in Bracton's judicial career is that in 1245 he visited the counties of Lincoln, Nottingham and Derby as a justice in eyre along with Roger Thurkelby, Gilbert Preston and others; he was at Lincoln on the morrow of the Ascension, at Nottingham on the 30th of June[2]. Seemingly he was never sent on any other eyre of the common kind; but late in 1259 he was sent by the baronial council then in power on an eyre of a very special character for the redress of grievances[3]. In 1248 however there begins a long series of entries on the Patent Rolls which shows that from that time until his death he was constantly commissioned to take assizes in the south-western counties, Cornwall, Devon, Somerset, sometimes Dorset and Wiltshire; rarely was he sent elsewhere[4]. This series goes on with hardly any break until the end of 1267; the last entry that I have found is dated the 26th of December in that year[5]; we have seen

As justice of assize.

[1] Out of several thousand fines I have seen less than a dozen levied coram ipso rege.

[2] Rot. Cl. 29 H. 3, m. 8 d; Rot. Cl. 30 H. 3, m. 8 d; Feet of Fines for Derbyshire; Feet of Fines for Yorkshire, 25 to 30 Hen. 3, No. 251; see also Tower Assize Roll, No. 10.

[3] Rot. Cl. 44 H. 3, m. 18 d.

[4] The first entry that I have seen is dated 12 Feb. 1248, Rot. Pat. 32 H. 3, m. 10 d; this seems the only one in this year; in two years time they become common. The first entry from the Fine Roll in the Excerpta is from 1250 (vol. 2. p. 82). The Coram Rege Rolls 90 and 96 are rolls of assizes taken by him. They should be printed.

[5] Rot. Pat. 52 H. 3, m. 33 d. The last entry in the Excerpta e Rot. Fin. is from 1267 (vol. 2, p. 458).

other reason for believing that he died in 1268. Hence we might infer with certainty that he was one of the regular permanent judges. But further there is an entry on the Close Roll under date 7th Aug. 1259[1], which declares that henceforth special justiciaries (*speciales justiciarie*) are only to be committed to the following persons, namely, Roger of Thurkelby, Henry of Bath, Henry of Bretton, Giles of Erdington, Gilbert of Preston, William of Wilton, John of Wyville. This seems to mean that a commission to take this particular assize or to hear that particular action is only to be granted to one of the judges here named. It looks like an attempt of the baronial council to limit the king's power of appointing any one whom he pleases, to act as justice for this occasion only, an attempt prophetic of future statutes[2]. Now with the exception of Bracton all these judges at one time or another sat on the Bench at Westminster and fines were there levied before them. But Bracton seems never to have sat on the Bench. I have examined several hundred feet of fines and thus constructed the table of justices who sat on the Bench, which will be found at the end of this Introduction; my results agree fairly well with those obtained by Dugdale, and so it appears certain that Bracton never held the placita de banco[3].

Not as justice of the Bench.

He holds the pleas which follow the king.

That at times he held the placita coram ipso rege there is evidence, sparse indeed, but yet sufficient. In a cartulary of Waltham Abbey is found a copy of the chirograph of a fine levied as early as the autumn of 1248 coram ipso rege; the justices named in it are Henry of Bath, Jeremiah of Caxton

[1] Rot. Cl. 43 H. 3, m. 7 d.

[2] The justices of assize actually commissioned in the next year are all the above and Peter Percy, John Cave and Nicholas de la Tour. The number during the previous years had been considerably larger, fifteen or yet more, including some, e.g. Robert Walerand, who may have been regarded as royal partizans. After this the number again increases slightly, and Walerand among others was again commissioned. (MS. Index to Patent Rolls.)

[3] I looked at the fines for Bedford, Berks, Bucks, Devon, Derby, York and 'Divers Counties' until I obtained several concurrent authorities for the judges of each term. An examination of the fines for other counties might lead to some modification of the list, but the search seemed quite sufficient to show that Bracton never was one of the regular occupants of the Bench. In Rot. Hund. vol. 1, p. 14, jurors speak of a case as decided by Henry of Bath and Henry of Bretton justices of the bench; but this is but a verdict and refers to a past time.

and Henry of Bratton[1]. The foot of another fine levied between 1246 and 1256 gives us as the judges who are with the king, Henry of Bath and Henry of Braston[2]. In another from the summer of 1257 Henry of Bath, Henry of Bretton, and Nicholas de la Tour (de Turri) are the judges[3]. Just at this date we find Bracton in receipt of £40 a year from the Exchequer, the usual judicial salary[4]. A Plea Roll of 1253 speaks of a past time when Jeremiah of Caxton and Henry of Bretton held the pleas coram rege[5]. In 1255 a case is to be heard by Henry of Bath, Henry of Bratton, Henry de la Mare and Nicholas de la Tour and others of the king's council in the king's court[6]. In 1254 the king provided Bracton with a house in London[7], in 1253 and again in 1256 with royal venison[8]. Lastly Matthew Paris has preserved the record of a suit between the Abbot of St Albans and the Bishop of Durham. It followed the king; the writs commanded appearance coram nobis ubicunque fuerimus. In November 1256 it came before Henry of Bretton and Nicholas de la Tour at Winchester; a judicial writ was issued and tested at Clarendon by Henry of Bretton; the next year it came before the same two judges at Westminster and the judicial writ was again tested by Henry of Bretton[9]. At this moment Bracton seems to have been the premier of those judges whom the king had with him. From all this it may be inferred that from 1249 to 1259 or thereabouts, he was a judge constantly employed in hearing pleas before the king. That he should not either have been sent on eyre or have held the placita de banco is rather curious; but the same is true of Jeremiah Caxton with whom he is more than once associated, and of the more famous or notorious Robert Walerand; Nicholas de la Tour again does not appear on the Bench until many years after he has been holding pleas

[1] MS. Harl. 391, f. 71.

[2] Feet of Fines, Divers Counties, No. 208. A hole after the word *tricesimo* makes the exact date doubtful.

[3] Divers Counties, No. 332.

[4] Issue Rolls of the Exchequer (Record Commission), p. 33.

[5] Placitorum Abbreviatio, p. 131.

[6] Rot. Pat. 39 Hen. 3, m. 3 d; Foed. vol. 1, p. 320.

[7] Rot. Pat. 38 H. 3, m. 2. (MS. Ind.)

[8] Rot. Cl. 37 H. 3, m. 3; Rot. Cl. 40 H. 3, m. 6. (MS. Ind.)

[9] Mat. Par. (ed. Luard), vol. 6, pp. 330, 331, 347, 348.

before the king, and Henry de la Mare and William of Wilton, both distinguished judges, appear there but very casually. The natural inference is that the king found Bracton a useful man to have about him.

His last years.

For the years after 1259 there is less evidence. Bracton steadily took assizes in the south west, but that he was with the king I have seen no proof. However when the time of storm and strife is over he again appears in high place. In the spring of 1267 he was appointed member of a commission of prelates, judges, barons and knights to hear the claims of 'the disinherited,' of those, that is, who had forfeited their lands by siding with de Montfort[1]. He and another royal judge, Richard of Middleton, are named between a bishop and an abbot and before all others, and he is named before Middleton. It seems likely then that all along and until his death he held pleas before the king and some have conjectured that he may be called chief justice. A thorough search among existing records would probably reveal a few more facts[2].

Statement that he was killed at Lewes untrue.

It must not be dissembled, however, that as to his death a certain difficulty is created by an entry on the Fine Roll, which seems to have escaped the notice of his biographers, though it has long been in print. The roll for A. R. 49 (A.D. 1264—5) has several writs which direct that the interest, fees and penalties due to the Jews in respect of the debts owed by certain favoured persons shall be forgiven. One such writ, dated 8th March, 1265, is made in favour of Adam le Despenser. Then comes the following entry:—

[1] Rot. Cl. 51 H. 3, m. 10 d. Isti assignati sunt ad querelas exheredatorum audiendas. Bishop of St Davids, Henry of Bratton, Richard of Middleton, Abbot of Tintern, Robert Neville, Eustace Baliol, Roger Sumery, Alan de la Zouche, William of S. Adomar, Adam of Gesemuth, Simon of Crey.

[2] It has been thought that he may have borne the title of chief justice during the interval between the death of the Barons' Justiciar Hugh le Despenser at the battle of Evesham, 4 Aug. 1265, and the appointment, 8 March, 1268 (Rot. Pat. 52 H. 3, m. 23), of Robert Bruce as chief justice to hold pleas before the king himself. This last date must be very near that of Bracton's death. But the claims of Robert Walerand deserve consideration, for it seems that he pronounced the sentence of Winchester, Sept. 1265; such at least seems the meaning of the following lines from an ancient poem (Chronicle of Rishanger, Camd. Soc. p. 145):—

Exhaeredati proceres sunt rege jubente
Et male tractati, Waleran R. dicta ferente.

'Consimilem literam habet Johanna soror et heres Henrici de 'Brattona qui interfectus fuit in conflictu habito apud Lewes[1].' Less than a year after the battle this entry was made. However it is absolutely certain that Henry of Bratton the judge was not slain at Lewes; many entries on this very roll and other later rolls set this beyond doubt and debar us from the interesting question under which banner he was fighting on the fatal day. We must suppose either that he had a namesake, or that the clerk who wrote the Fine Roll made a blunder. The latter alternative seems the more acceptable. Of a second Henry of Bratton no trace has been found, and the writ in question would hardly have been made in favour of a nobody. Two of the king's justices were killed at Lewes, William of Wilton fell by the sword, Fulk Fitz Warin was drowned[2]. It may be that the name of one of them should have appeared in this writ instead of that of their illustrious colleague.

Great events of his time.

But the mention of Lewes must remind us that the ten last years of Bracton's life were great years in English history, years of discontent and strife, of dissolution and reformation, of constitutional growth and civil war. The Mad Parliament, the Provisions of Oxford, the Provisions of Westminster, the paper constitutions, the fruitless negotiations and projects and compromises, the Mise of Amiens, the battle of Lewes, the Parliament of 1265, the battle of Evesham, the sentence of disherison, the dictum of Kenilworth—these are still famous. The question then is natural, what part did Bracton play in them? On the answer to this may depend our opinion as to the authenticity of the most celebrated of the words attributed to his pen.

He played no prominent part in politics.

The answer must be that he played no prominent, no picturesque, part, did nothing that any chronicler would note. A little more may be said. He became a judge at a time when Henry was already provoking the storm, when parliaments were already clamorous for reform, when year by year the complaint went up that despite oaths and confirma-

[1] Rot. Fin. 49 H. 3, m. 7. (Excerpta, vol. 2, pp. 421—2.)

[2] Rishanger's Chronicle (Rolls Series), p. 28.

tions the charters were not kept, that writs were issued contrary to the law of the land. Such complaints, if they were complaints against the king, were complaints against his judges also. A royal judge of the time may have felt with the discontented barons, the discontented nation; Roger Thurkelby could confide to Matthew Paris his dislike of the *non obstante* clause, his dread of the Poitevin favourites[1]; but an open attachment to what we are wont to think the patriotic and constitutional party would hardly have been possible. Bracton however grew in favour with the king, held the specially royal pleas before the king himself. Still when the storm burst he did not lose his place. On the contrary the entry on the Close Roll dated 7th Aug. 1259, of which we have already spoken, shows that he was trusted by the then dominant barons. He is one of seven judges who may be commissioned to take assizes. Again in the same year, directly after the publication of the Provisions of Westminster, the ruling barons sent out commissioners to inquire into and redress the popular grievances, especially the misdoings of the sheriffs and royal bailiffs. The work was to be done by the judges associated with trusted members of the baronial party. Bracton was commissioned for Gloucester, Worcester and Hereford along with Humfrey of Bohun Earl of Hereford. This seems clear proof that he was not regarded as a royal partizan[2].

He was trusted by all parties.

During all that follows Bracton is still commissioned to take the Devonshire assizes; men may come and go, constitutions may be established and annulled, king or earl may be victorious, but Bracton takes the Devonshire assizes.

[1] Mat. Par. vol. 5, pp. 211, 317.

[2] Rot. Cl. 44 H. 3, m. 18 d. 28th Nov. This commission is enrolled very near the celebrated Provisions. It is for an eyre of a very special character and gives valuable information as to the causes of the great crisis. Rishanger (Rolls Series, p. 5) reports that in 1260 the justices in eyre were repulsed from Hereford, because, according to the great men of the county, the eyre was contrary to the Provisions of Oxford. This should be read in connection with the statement of the Worcester annalist (Ann. Monast. vol. 4, p. 446) that the justices who came to Worcester on 1 July, 1261, were repulsed, because seven years had not elapsed since the last eyre. These statements do not refer to Bracton's journey with the Earl of Hereford; but they are important illustrations of the national grievances. The king oppresses the nation; the judges are the instruments of oppression.

He is commissioned before and after the day of Lewes, before and after the day of Evesham. What we say of him might be said of at least some other of the judges. William of Wilton, who was layman and knight, fought and died for the king; but on the whole the judges seem to be gaining that position outside party politics which we in this day think should naturally be theirs. Almost the last that we read of Bracton is that he is appointed to hear the complaints of the Disinherited[1]. It would seem then that he must have been a moderate, fair-minded man, whom all could trust and regard as a great lawyer and a righteous judge, that they could say of him as he wished, Justus es, domine, et rectum judicium tuum[2].

The order for the return of the rolls.

One small fact of considerable value was revealed by the diligence of Madox[3]. In 1258 the barons of the Exchequer were ordered to procure that the various plea rolls of Henry's reign which were in the hands of divers persons should be restored to the Treasury, the proper place for them; an order was made that Henry of Bratton should bring in the rolls of Martin of Pateshull and William of Raleigh; a similar order was made for the restoration of the rolls of Stephen of Segrave which were in the hands of the Abbot of Leicester and the Prior of Kenilworth[4]. The order may have been a very proper order; it was only right that the records of the king's court should be deposited in the custody of public officers; and yet we may be the losers, for who shall say how much more perfect Bracton's book might not have been, had he not been deprived of the rolls whence he drew his law? At all events here is a fact to be remembered in the course of our investigation.

[1] See above p. 22.
[2] Br. f. 108.
[3] Hist. Exch. vol. 2, p. 257.
[4] Exchequer Memoranda, Lord Treasurer's Remembrancer, 42 Hen. 3, m. 12 d. Segrave died in the Abbey of Leicester, that is, the Abbey of S. Mary des Prés. Mat. Par. vol. 4, p. 169.

§ 4. *Of Bracton's Text.*

The editions of the treatise.

We must now turn from the man to his text. But where are we to find that text? In 1569 an edition was published by Richard Tottell. A reprint of this was published in 1640, and what in substance was hardly better than another reprint was lately published under the authority of the Master of the Rolls. The text of 1569 was in its day a not discreditable product. The most serious fault to be laid to the charge of its anonymous author 'T. N.' is that to all seeming (though in his preface he shows himself aware that the manuscripts teem with interpolations) he wished to give as ample a text as possible and chose for his guide the manuscripts which would give the most. About forty variants, many of them trivial, were all that he found worthy of note; though he says that twelve manuscripts were examined. But though not discreditable in its day, the text of 1569 should satisfy no one in this more critical age, when the collation of MSS. has become a comparatively easy task. I have myself seen in London, Oxford and Cambridge near thirty MSS.; there may well be fifty in existence, some from the thirteenth, most from the fourteenth century. The differences between them are very numerous and very important, and the making of a good edition will some day demand several years of hard labour. Not that the true reading of any given sentence is often seriously doubtful; Bracton's language is simple and straightforward. Allowance being made for misprints and for the obvious blunders of copyists, many of which an intelligent reader can rectify by conjecture, the text of 1569 will generally give each sentence pretty correctly; the proper names have suffered worst and this makes the verification of Bracton's citations a somewhat difficult task; also the passages of Roman Law unfamiliar to the transcribers have suffered very badly. But when the question is what sentences should be in the book and in what order they should come, then there is often grave cause for doubt; the manuscripts

The manuscripts.

disagree, and the printed text is a thoroughly bad guide. Not unfrequently one will find in a MS. a passage which certainly does not come from Bracton. Two plain instances may be seen in Tottell's text; reference is made to a case before John of Metingham, a judge of Edward the First's day, a case which has been recently printed in one of Mr Horwood's Year Books[1]; also we read how the period of limitation for an assize of mort d'ancestor was changed in king Edward's day by the Statute (1275) of Westminster the First[2]. But in some manuscripts one will find worse things than these; sometimes a large selection from the Edwardian statutes is incorporated[3], or again occasion is taken of Bracton's mention of the tree of consanguinity to foist in a whole treatise of this or that learned canonist on the subject of consanguinity and affinity[4]; in one case may be found embedded in the middle of Bracton's text what openly proclaims itself to be the work of the Spanish priest Johannes de Deo[5].

Interpolations in the MSS.

Against such obvious interpolations it is possible to guard oneself; but there are subtler sources of error. A reader of the printed book, who reads with the persuasion that his author was a sensible, orderly-minded man, will note many passages which seem to be dislocated and some at least of these he will suspect of being marginal notes which in the process of transcription have forced their way into the text. Occasionally what has all the appearance of being a note of this kind has lodged itself in the very middle of a sentence[6]. A glance, however superficial, at the MSS. will strengthen the suspicion. It is rare I believe to find a MS. which has in its margin notes, which are as old or nearly as old as

Addiciones.

[1] Br. f. 26. This seems clearly the case from 1294 in Y. B. 21 and 22 Edw. I. p. 449. I have not yet seen this case in any MS.

[2] Br. f. 253 b. Most of the MSS. give the new rule and seem to have as their common original some MS. into which that rule was interpolated; MB, MM, OA, OB, however give the old law fixing the return of John from Ireland as the period of limitation.

[3] ME.

[4] ME, OB.

[5] ME. I have given some account of this in the *Law Quarterly Review*, vol. 2, p. 278.

[6] I have given one instance of this in the *Law Quarterly Review*, vol. 1, p. 340. See generally as to the state of the MSS. the article in *L. Q. R.* vol. 1, p. 189, by Vinogradoff, who in a few weeks learned, as it seems to me, more about Bracton's text than any Englishman has known since Selden died.

Bracton's day; marginal notes which are clearly of a later time are not very uncommon and a few of these have become part of the printed text[1]; but in most of our MSS. the older notes or glosses have already got themselves out of the margin. Often enough however their true nature is revealed by the fact that they are to be found only in some of the MSS., while in others they appear now at this point now at that of the text; having once left their proper home they have wandered about in search of a convenient resting place. Then again there are MSS. in the margin of which one occasionally finds the word *Ad-di-cio* so written as to stamp as an addition the passage over against which it is set. This points to some older MS., the head of the family, which had these passages not in its text but in its margin. In one MS. there are at least nineteen passages thus marked. In more than one there are traces of these *Addiciones* having been numbered, thus *Addicio Prima, Addicio Tercia, Addicio Undecima.* In another MS. the word *Plus* has been used for the same purpose, and it may be suspected that the word *Nota*, which is very often found, has sometimes though not always a similar meaning[2].

The Digby MS.

There is, again, one MS. in the Bodleian Library[3] which is of exceptional importance. Here a large part of what we have been wont to regard as Bracton's text stands in the margin. Two scribes at least were employed on the work; the parts written by one of them are rich with marginalia in his handwriting; the other either left marginalia uncopied or else incorporated them in the text. Now the matter which is still in the margin comprises many, if not all, of the passages which in corresponding parts of other MSS. are stamped as *Addiciones* and many other passages as well; in all they make a large mass, perhaps a thirtieth part of the printed book. The great majority of them are found as part of the text in the printed version of the treatise. They

[1] The most elaborately annotated versions that I have seen are the two Cambridge MSS. CA, CB.

[2] MH and OC are good specimens of MSS. which show *Addiciones*; but one or more may be seen also in MB, MC, MD, MI, MM and CB, while MA has several passages marked as *Plus*, *Plus usque huc* and the like.

[3] Digby, 222, my OA.

consist mainly of explanations, illustrations, qualifications, of the text; but sometimes new topics are introduced and discussed at length. A decided opinion would be premature, but they look as if they might well have come from Bracton himself. The MS. has the semblance rather of a book which is still in the making, than of a book which was written by one man and afterwards glossed by another. Among the marginalia are citations of cases from very early years of Henry's reign, and I have not noticed any citations which might not have been made by Bracton. These marginal matters are not the rough notes of a practising lawyer made merely for his own behoof; some are elaborate and learned disquisitions. The passage for instance in which the Bracton of the printed Vulgate makes his greatest parade of Roman law with numerous citations from Code and Digest, stands in the margin[1]. But of course it were dangerous to dogmatize until a real effort has been made to settle the text by a detailed comparison of all existing MSS.

Variances between the MSS.

The best example of the problems which lie in wait for an editor of Bracton is afforded by what is perhaps the most remarkable passage in the whole book. Seldom have more momentous words been written in a lawyer's text, for this is the famous passage about the king so often quoted in the political trials of the seventeenth century, quoted by the President of a High Court of Justice when an English king was to be sent to the scaffold[2], repeated over and over again by legal theorists and historians as giving the opinion of the great mediaeval judge. A brief digression about this matter will serve the purpose of showing how little trust should be put in the text of the printed book. Other illustrations might easily be chosen, but this should be of interest to others besides lawyers and antiquaries[3].

Bracton[4] in his orderly manner has come to speak of

[1] The whole of De Actionibus, cap. 12, § 5 (f. 114). CB also has this in the margin and in some other MSS. it is altogether wanting.

[2] *State Trials*, ed. 1809, vol. 4, col. 1009.

[3] See Vinogradoff's article in *Law Quarterly Review*, vol. 1, p. 189. I can add a little to what he there said, but the discovery, such as it is, is due to him.

[4] Br. f. 34.

charters, charters of feoffment and so forth. He distinguishes royal from other charters. Concerning royal charters and the deeds of kings, he says, neither the justices nor private persons can nor ought to dispute, nor can they interpret them should any doubt arise. If the words are dubious, obscure or ambiguous, the king's interpretation and the king's pleasure must be awaited, for whose it is to grant, his it is to interpret; even if the charter be altogether false because of an erasure or a forged seal, still it is better to proceed to judgment before the king himself. Thus far the undoubted Bracton. Then comes the following:—

The passage about the king and his masters.

Item nec factum Regis nec cartam potest quis iudicare, ita quod factum domini Regis irritetur[1]. Sed dicere poterit quis quod Rex iusticiam fecerit, et bene, et si hoc, eadem ratione quod male, et ita imponere ei quod iniuriam emendet, ne incidat Rex et iusticiarii in iudicium viventis Dei propter iniuriam. Rex autem habet superiorem Deum scilicet. Item legem per quam factus est Rex. Item curiam suam videlicet comites, barones, quia comites dicuntur quasi socii Regis, et qui habet socium, habet magistrum, et ideo si Rex fuerit sine fraeno, i. e. sine lege, debent ei fraenum ponere.

If, (the book continues,) the king is left unbridled by his barons, his subjects will cry to Our Lord Jesus Christ to bridle him; to whom the Lord will answer, 'Behold I will 'call upon them from afar a mighty nation and an unknown, 'whose tongue they shall not understand, which shall tear up 'their roots from the earth, and by such shall they be judged 'for they would not judge their subjects justly'; and in the end bound hand and foot He will send them into the fiery furnace and outer darkness, there shall be wailing and gnashing of teeth.

Jeremiah, v. 15.

The reader will feel a strange shock as he passes from these glowing words to the icy calmness of the next sentence, 'If a private person make a gift of a certain

[1] Observe that the judges are not to pronounce the king's charter void. This seems directed against the use of the *non obstante* clause, one of the great grievances of the time. The text which hitherto has been very submissive to the king, allowing him to say that his charter means anything or nothing, now begins to turn against him. The following sentence is obscure, and I have not found an acceptable variant. It seems to mean this—It is allowable to say that the king has done justice and right; this being so, it must be allowable also to say, when such is the truth, that he has done ill, and thus to impose on him the duty of making amends.

'thing for a future consideration it behoves that the things 'which are to be given in return be certain.' This abrupt change of key might not arouse suspicion. But the doctrine here delivered is flatly contrary to several other passages in the book. The writer has already had and taken a good occasion for explaining the nature of the kingship, when near the outset he made a classification of persons. All are below the king and he is below none save God. He has no peer in his realm, much less a superior. He ought to be below no man, but only below God and the law. He ought indeed, like Christ whose vicar he is, to obey the law; but if he do wrong and will not make amends, it is his sufficient punishment that he must await God's vengeance. No one may presume to dispute his deeds, much less to go against his deeds (f. 5 b). Such is the theory which Bracton has put in the proper place for a theory of royalty. It does not stand alone. Elsewhere he says incidentally, Rex parem non habet, nec vicinum, nec superiorem (f. 52), Parem autem habere non debet nec multo fortius superiorem (f. 107)...erit iniuria ipsius Domini Regis, nec poterit ei necessitatem aliquis imponere quod illam corrigat et emendet nisi velit, cum superiorem non habeat nisi Deum, et satis erit illi pro poena quod Deum expectet ultorem (f. 368 b), Pares non habet, neque superiores (f. 412).

Contradicted by other passages.

The contradiction is glaring and it is a contradiction over the most burning question of contemporary politics. May the earls and barons force the king to do right and abstain from wrong? There is yet however one passage to be noticed; its authenticity seems unquestionable[1]. The king ought, when petitioned, to make atonement for his misdeeds, quod si non fecerit, sufficiat ei pro poena quod Dominum expectet ultorem, qui dicit, 'Mihi vindictam et Ego retribuam', nisi sit qui dicat quod uniuersitas regni et baronagium suum hoc facere debeat et possit in curia ipsius Regis (f. 171 b). Now under this *nisi sit qui dicat*, Bracton may well be stating his own opinion. Most undoubtedly he held that the king was

[1] MA, MB, MC, MD, ME, MF, MH, MI, MK, ML, OA. In no MS. have I observed anything suspicious about this passage.

bound by law, that God would exact of him a very strict account. The king who does well is God's vicar; the king who does ill is the devil's vicar (f. 107 b). He is very much in earnest about this; doubtless he thought that the king was doing ill; many sentences in his book can have been no pleasant reading for Henry. But between this hint that the baronage and the incorporate realm may perhaps restrain an erring king and the dogmatic statement that the king is below his court, that the barons are his equals and his masters, that if they do not restrain him they will be damned, there is a vast gulf.

The contradiction soon perceived.

The discrepancies between these various passages were brought to light in the great trials of the seventeenth century. Every one cited, every one could legitimately cite Bracton. But long before they had been apparent to at least one reader. In the Cambridge library there is a sumptuous manuscript comprising Bracton's treatise and divers other books of law. Bracton's text has been elaborately glossed by one whom there is some reason for calling John of Longueville, a justice of the time of Edward II. Against the passage in which his author expressly treats of the kingship and says that the king has no peers (f. 5 b), he sets down an argument drawn from the more questionable passage (f. 34), and proves with syllogistic parade that the king has equals, superiors, masters[1]. But indeed the contradiction lies on the surface. Conceivably the same man at different times wrote all these sentences; but he can not have intended that all of them should appear as parts of one book; one of them looks very much as if it had been written with the very object of explicitly contradicting the others. Nor even were there no manuscripts extant, could there be much doubt as to which passage should be regarded as the afterthought or interpolation. The statement that the king has fellows and masters is contradicted by at least five statements found in all parts of the book.

[1] MS. Dd. vii. 6, folio 4 dors. according to a pencil pagination of the Bracton. This is the MS. used by Mr Nichols in his edition of Britton and described by him, vol. 1, p. lx. fol.

Now in the Digby MS. this passage is not to be found. Unfortunately however it is in a part of the treatise which was copied by that one of the two scribes who did not copy marginalia. In six other MSS. I have found no trace of it[1]. In an eighth it is not to be found but *Addicio de Cartis* appears in the margin[2]. In another good Oxford MS. it is comprised in an *Addi-cio*[3]. Lastly the MSS. which give it differ among themselves as to where it shall come; very often it is made to precede the paragraph which in the printed book it follows[4]. The witness of the MSS.

The conclusion then to which we are led is that this famous passage is no part of the original text. Certainly it is of ancient date; it is found in the Fleta[5], a book which is believed to have been written in 1290 or very shortly afterwards[6]. Its vehemence savours strongly of the time of revolution which ended with the battle of Evesham. Bracton may have written it in the margin of his manuscript, having learned and unlearned many things since he wrote the body of the treatise. On the other hand it seems unlikely that one who steadily acted as judge after the death of de Montfort, who was selected to hear the claims of the Disinherited, had written what must have been an earnest, almost violent, defence of the barons' cause. Of course however this interesting question cannot be solved by *a priori* speculations[7]. These famous words not part of the original text.

1 MA (the Royal MS.), MI, MM, MN, CC, and the Cholmely MS. at Lincoln's Inn.

2 MB.

3 OC.

4 In MF, MH, MK, OC, CA, and the Hobhouse at Lincoln's Inn the passage *De cartis vero regiis et factis regum non debent.........procedatur ad judicium*, comes after *Item nec factum regis......stridor dentium.*

5 Fleta, f. 17.

6 Nichols, Britton, vol. 1, p. xxvj.

7 Attention may here be called to Case 1108. A strong statement of the principle that the king cannot be sued is enrolled as part of the judgment of the court; Dominus Rex non potest summoneri nec preceptum sumere ab aliquo cum non habeat superiorem se in regno suo. This is very contrary to the old fable, as Bacon called it (Works, ed. Spedding, vol. 7, p. 694), about *Praecipe Henrico Regi*, in which perhaps some still believe. See Allen, *Royal Prerogative*, Authorities, p. xxxij and Stubbs, *Const. Hist.* vol. 2, p. 238.

§ 5. *Of the Date of Bracton's Treatise.*

Conclusions as to date must be provisional.

Now I have made no effort to settle Bracton's text; this could not be done as a bye work; some day it will, we may hope, be the serious task of a competent scholar. It seemed to me that I should best be furthering that task by publishing this Note Book. So though I have occasionally examined such MSS. of the treatise as lay readiest to hand, I have not gone very far behind the printed text. Enough has been said however to show that the printed text is very untrustworthy, that it contains many things which were better in the margin or in an appendix; and, this being so, the problem of assigning a date to the treatise, is obviously difficult. In particular we may be induced to fix too late a date by some few passages which will turn out to be no part of the original work. Still if this danger be had in mind a few cautious conclusions may be attained which will be valuable in the course of our argument. The first conclusion, as I think, is this that the book is unfinished, and therefore, in a certain sense, has no precise date.

The treatise unfinished.

That it is an unfinished book seems most likely. The last part of it consists of an elaborate treatise on the writ of right. We naturally expect that this will end with some account of the trial, the duel and the grand assize. About this much might have been written which would have been of great use to practitioners; it is the consummation of the whole procedure; all that has gone before touching the forms of writ and count, the summonses, defaults, essoins, warranties, exceptions, should be preliminary. But we are disappointed; instead of that for which we look we get three brief chapters about the mesne and final process in personal actions; and so ends the book. This unsatisfactory ending is enough to rouse suspicion and the suspicion is confirmed if we remember that, when dealing with the trial by battle of criminal cases, Bracton told us that the reason for a certain rule would be given below when the wager of battle in a

civil action was described[1]. This is a distinct case of a promise never fulfilled; the wager of battle in a civil action is never described.

Other cases there are of unfulfilled promises, though these are less distinct. Thus there is a promise to treat of the action for recovering a villein (*placitum de nativis*)[2], of the action of debt[3], of the action of trespass[4], and of fines[5]. Now though the writer does touch these topics incidentally, still such casual treatment is not what he has led us to expect. What is more, if we look at the contemporary plea rolls, or at the cases in this Note Book, we shall see that an exposition of these matters is just what is required in order to make the treatise a very complete account of the law administered in the king's court. Bracton had Glanvill's work before him and Glanvill had devoted a book to the *de nativo habendo*, another to the *placitum de debito*, another to the *finalis concordia*. Fines were matters of daily importance; the action of debt was becoming common in Bracton's time and by the end of that time the action of trespass was by no means rare. The constant mention that he makes of villein status as a matter which may come into debate in the course of various actions sets us on hoping, but hoping in vain, that he will tell us about the one action in which the question of status can be directly raised and decided. The promises he gives us are promises which we have a right to expect and they are unfulfilled. Unfulfilled promises.

Unfulfilled, that is, in the printed book. The supposition that we have lost something should not be altogether excluded; and a diligent examination of all the MSS. might possibly bring to light some as yet unprinted chapters. But unfortunately there is much to make us think that we have

[1] Br. f. 141 b; et est ratio assignata infra de civilibus actionibus de duello vadiando pro terra. See also f. 331; sicut infra de duellis.

[2] Br. f. 7; infra plus de hac materia de placito de nativis et fugitivis, qualiter revocantur in servitutem qui sunt extra potestatem dominorum et in fuga.

[3] Br. f. 60; sed quia succuritur agentibus et jus suum prosequentibus in eisdem per breve de debito vel quasi, ideo inferius de debito plenius dicetur.

[4] Br. f. 164; ut infra de transgressionibus ubi plus de hac materia.

[5] Br. f. 33 b; et de hac materia inveniri poterit infra, de finali concordia.

already the whole of what was written. The fact that Fleta and Britton break off where Bracton breaks off is an almost conclusive proof that the trial of the writ of right was never described; if Bracton's description of it has been lost, it was lost within a few years after his death.

Self-contradictions.

That he at one time intended to perfect his account of the great ultimate remedy for the recovery of land seems to me certain, and I think it probable, though less certain, that his scheme comprehended some treatment of final concords, of actions of debt and of trespass and the action for reducing a fugitive serf into villeinage. Were this not so it would be rash to regard as evidence of incompleteness the occasional occurrence of self-contradictions; even in these days of print it is not unknown that a very good writer may contradict himself. When however we scan Bracton's work with the belief that it is unfinished, this belief will find fresh sustenance in many quarters. Passages which we should otherwise reject as interpolated by a later hand may be admitted as the author's afterthoughts though they do not harmonize with their context. In a few instances we find contradictions so glaring that we cannot ascribe them to confused thought or insufficient analysis. One striking example may be enough:—the question is three times raised, (surely a very notable question when regard is had to the "common law" of later days,) whether land can be made devisable *per formam doni*, that is to say, if there be a feoffment to *A* and "his heirs, assigns or devisees" (*tibi et heredibus tuis, vel cui dare vel assignare in vita, vel in morte legare volueris*) can *A* devise the land?—twice is this question answered in the affirmative, the devisee can recover from the heir; once the form of writ applicable for the purpose is given[1]; once it is said that such a writ, though as yet unheard of, may well be made[2]; but in a third passage it is denied after argument that the devise will be valid[3]. Now were we sure that Bracton finished his book we should be strongly tempted to reject one or two of these three passages; but as it is, they

[1] Br. f. 412 b.
[2] Br. f. 18 b.
[3] Br. f. 49.

may all well be his, representing the fluctuations of his own opinion or the fluctuations of judicial practice. So again, to refer once more to the ever famous words[1], it is conceivable that Bracton wrote that the king has as superior to him his court, to wit his earls and barons, though the same Bracton repeatedly and emphatically denied that the king has any superior save God and the law, or even any equal[2]; just in his day such theories as these were being rapidly moulded and remoulded by the course of events.

On the other hand the opinion that we have here a mere collection of various tracts written at different times and loosely strung together seems unfounded. It is an organic book, it has a definite intelligible plan, the parts are closely interdependent, references are made and in general correctly made to what has gone before and what is coming afterwards; some parts are more highly finished than others, but the whole hangs together very tightly and resists any attempt to cut it up into independent sections. The book an organic book, not a collection of tracts.

Finding a book left unfinished by one who died in 1268 it were a natural first guess that he was actively engaged upon it when death stayed his hand. Now it well may be that to the very end of his life he still from time to time added here a gloss and there a note to a manuscript which was yet in his possession; but the text as a whole must have an earlier date, indeed the next piece of evidence that we have to consider would incline us to give it a much earlier date. This consists of the cases which are cited from the rolls. His manner of citing will be described more fully below; here it is enough to say that as a general rule he gives the date of the case, or else information which enables us easily to fix the date. A glance at the table printed at the end of this Introduction will show that at least nine-tenths of his cases come from the years between 1216 and 1240. Most of the cases he cites are earlier than 1240.

With A.R. 24 (A.D. 1239—40) the continuous stream of citations ceases. I believe that only nine cases are vouched as being of later date than this, one from an eyre of A.R. 29 Very few later cases.

[1] Br. f. 34. [2] Br. f. 5 b, 52, 107, 171 b, 368 b, 412.

or 30[1], two (one of which is twice cited) from A.R. 31[2], one from A.R. 32[3], one from A.R. 32—33[4], one from A.R. 33[5], one from A.R. 38[6], one probably from A.R. 42 (the printed text gives A.R. 13) lastly one from A.R. 46. Only nine cases from twenty-two years; one would like very much to say that these have been interpolated, for it must seem to us very strange that a text writer should prefer old cases to new. But saving only the first and the last two, I have not found in the MSS. any warrant for treating these citations otherwise than as part of the original text. The case from A.R. 38 is given without any mark that arouses suspicion, though A.R. 37 is the date to which it is most commonly assigned. The citation from A.R. 42 may have been interpolated[7], and there is good evidence that the citation from A.R. 46 was interpolated[8]; but I have seen nothing to show that the interpolator was not Bracton himself, and so far as MS. authority goes, these citations stand on the same footing as much that passes as Bracton's work. There are, again, cases which are cited without any date being mentioned. Their number is not very large, about forty if some vague references be included. Some of these I have been able to trace to the period from which Bracton has drawn most of his lore, the first four and twenty years of the reign. Others seem to belong to a considerably later time; one of them was tracked

[1] Br. f. 413. Some MSS. give A.R. 30, and ascribe it to an eyre of William Raleigh; this must be wrong; many other MSS. cite from the eyre of Thurkelby in A.R. 29; Bracton was with him on this eyre. A few, in particular OA, have not the citation. It may be an interpolation.

[2] Br. f. 414, *Abbot of Glastonbury and Bishop of Bath*, some MSS. give A.R. 30 some 31; Br. 114, 414 b, *Peter of Savoy and Abbot of Rievaulx*, some MSS. give A.R. 30, some 31.

[3] Br. f. 234 b, *Simon of Vendenge and Jordan de L'Isle.* This is in OA.

[4] Br. f. 241. *W. Bardolf.* This is in OA.

[5] Br. f. 368. *R. Syward.* This is in OA.

[6] Br. f. 339 b. A case to which, according to the printed text, S. Archbishop of Canterbury, was party. The year or the initial letter must be wrong; but OA and several other MSS. give B., which stands for Boniface and is right. There is a case on the roll for Mich. A.R. 37–38 (Coram Rege Roll, No. 93, m. 10 d) which looks like the case in question.

[7] Br. f. 277 b. *The heirs of John of Monmouth.* OA and other MSS. have a plain *xlij*, which would easily be turned into *xiij*. See as to this case Roberts, Calendarium Genealogicum, vol. 1, p. 73; I have found one stage of it in 1258, Coram Rege Roll, No. 106, m. 2.

[8] Br. f. 159. OA has this in the margin; it is not in MI or CA, or (according to Sir T. Twiss) the Parisian MS.; still it is commonly found.

by Vinogradoff to A.R. 1254[1]; this and a good many others of its fellows seem not to have formed part of the text as originally written[2]. Inferences founded on these imperfect citations would he hazardous. Of all passages open to the suspicion of having been marginal notes these are the most open. A note of a case which mentions no date might be very useful to the person making it; it would in general be very useless to others. Bracton writing for the world gives chapter and verse with laborious precision; Bracton, or any one else, scribbling in the margin for his own use would have no occasion to be so particular. On the whole then though the copious stream of citations ceases with A.R. 24 (A.D. 1239—40) I have not found authority for rejecting the few scattered cases which come from a time as late as A.R. 37 or 38 (A.D. 1252—4) or even for supposing that yet later cases were not cited by Bracton himself. An ordinance made on the occasion of the dedication of the Abbey of Hayles, which took place on 5th Nov. 1251 is mentioned and I have seen no reason for consigning it to the margin.

Some of the latest citations due to Bracton himself.

That some of the interpolations come from Bracton himself seems very probable. The printed text gives a subtle exposition of the doctrine of possession as applied to a case in which a donee obtains physical control of part of the thing given, while the donor remains in possession of the other part. There are several good MSS. in which this is not found[3]. In the middle of it we read, 'Male actum fuit in 'contrarium inter Rogerum de Reyne et Robertum de Shute 'de terra de Vulverton.' Now this case (it concerned the hun-

[1] *Reyne* v. *Shute*, Br. f. 49 b; Coram Rege Roll, No. 96, m. 3.

[2] Thus the case of Godfrey of Crawcombe, Br. f. 29, is omitted in many MSS.; the case before Lexington at Clarendon, Br. f. 45, is not in OA or MI; Henry Tracy's case, Br. f. 88 b, is in the margin of OA and OB and is not in MI; the case of the man of Cookham, Br. f. 144 b, is in the margin of OA and is not in MF or MI; the case of Thomas de Vipont, Br. f. 194 b, is omitted in several MSS.; so is the case of S. Mary, Oxford, Br. f. 285 b, which is in the margin of OA, and comes I believe from Mich. 1253. On the other hand the case of the Abbot of S. Albans and Geoffry of Childwick, Br. f. 56 b, seems part of the original text and must probably be later than 1250; for compare Mat. Par. vol. 5, p. 129.

[3] See f. 49 b. The interpolation begins with *Item si in carta donationis* and ends in the same folio with *per usum suum nihil acquirit*. It is not in OA, OB, MH, MI.

dred of Dulverton) may be seen on the precious roll of assizes taken by Bracton in the year 1254[1]. He held that a would-be donee had not obtained possession either of the land or of the hundred court which pertained to the land. The case was taken to the court above by the process of certificatio; as to the land Bracton's decision was affirmed, but as to the hundred it was reversed; this appears from a little strip of parchment annexed to the roll which well may be in Bracton's handwriting. "Male actum est in contrarium," then, is most likely the complaint of a judge over-ruled but not convinced. On the same roll there is a case between William Montacute and Andrew Wake[2]; in the margin of the Digby MS. of the treatise I have seen without any context the words *Wake Munt Agu.* That Bracton annotated his own work as late as 1254 seems plain, and unless some MS. will enable us to remove into the margin a yet larger mass of matter than that on which the Digby MS. casts suspicion, we shall have to hold that he was at work on his original text up to that date or a few years earlier.

Bracton at work as late as 1254.

His preference for old cases deliberate.

This may surprise us when we remember that the vast majority of the cases on which he relied were already twenty years old. Now in this context we should note a passage which stands at the outset of his book. Stating the scope and purpose of his work, he tells us that he had given his mind to ancient judgments of the just[3]. The judges of to-day, this seems his opinion, are perverting the law, they are too often ignorant and partial; we must go back to the wisdom of the men of old time. Now if due weight be given to this declaration it seems to follow that the judges whom Bracton revered, Pateshull and Raleigh, already belonged to a past age; their decisions were *vetera judicia.* Another passage may serve to show that by this phrase he did not necessarily refer to a very remote period; he tells us how on a certain point there was a difference of opinion among the

[1] Coram Rege Roll, No. 96, m. 3.

[2] Ibid. m. 10.

[3] Ego talis animum erexi ad vetera judicia justorum perscrutanda diligenter non sine vigiliis et labore, Br. f. 1. This is the reading of the printed text; but the MSS. generally give *perscrutando* and require a different punctuation of what follows.

ancients (*contentio inter veteres*) and solves the question by decisions cited from the fourth and sixteenth years of Henry the Third[1]. Still it was to old judgments that he went for his law. This may seem strange to us brought up in the belief that the latest decision of a court is of more value than any previous determination. But we have Bracton's word for it; he deliberately chose old judgments, judgments of judges no longer on the bench, as the best authorities.

Work substantially finished before 1259.

Thus much as to the earlier of the two limits within which the book must be placed. As to the later; Bracton did not die until 1268; but he cannot have written the main part of his book or have revised it during the few last years of his life. In the first place he repeatedly uses a phrase (*donec terrae fuerint communes*) which seems to imply that England and Normandy ought to be and (please God) will some day be, under the same ruler[2]. This phrase must have lost its meaning when in 1259 Henry resigned his claim to Normandy. Again it seems fairly certain that Bracton when he was writing did not know of the Provisions of Westminster, that he wrote therefore before October 1259. In some cases he states law inconsistent with those Provisions[3]; in others he ought to notice them if they be law. This would be a more thoroughly convincing argument were it not necessary to remember that there may have been moments at which some at least of Henry's judges treated the Provisions as null and void, the outcome of usurped power. Most of them were incorporated in and reenacted by the Statute of Marlborough in 1267; this would hardly have been done had they then been regarded as of indisputable authority. But Bracton would certainly have liked some of them to be law; would if he could have made them law. Thus he says that a murder fine should not be exacted in case of accidental death, but that a custom to the contrary prevails in some places[4]; the

[1] Br. f. 367.

[2] Br. f. 298, 415 b, 427 b, 428 b.

[3] Thus Prov. West. c. 14, prohibiting gifts in mortmain without the lord's consent is inconsistent with much that Bracton says; see especially f. 169 b. Prov. West. c. 15 declaring that the essoinee need not warrant the essoin by oath is contrary to what is said on f. 352.

[4] Br. f. 135.

Provisions ordain that in such a case no fine shall be due[1]. Again it was one of the flagrant grievances of the time that no damages could be had in the assize of mort d'ancestor; this in many cases enabled a lord to keep out the heir for a considerable while without making compensation; this grave abuse was redressed by the Provisions[2]: Bracton uses strong language about it, thinks that damages should be given ad reprimendam malitiam dominorum capitalium, suggests (as it seems to me) that damages may be given, but confesses that hitherto (hucusque) they have not been given[3]. This is hardly the language of one who knew of the Provisions but held them invalid[4].

No revision after 1256.

But another date can be fixed with greater certainty. I think it most unlikely that Bracton wrote a certain part of his book or ever revised the whole of it after the 9th of May 1256. The part in question relates to the essoin de malo lecti. The essoinee is given a period of a year and a day for his sickness; at the end of that time he must appear. But how is the year to be reckoned; in particular what is to be done about leap year? Bracton argues this question at length in a very curious passage[5]. The point, he admits, is disputed, but his own opinion is that in every case a year for this purpose means 365 days and 6 hours, so that the essoinee will always have precisely the same space of time no matter whether a 29th of February occurs or no. A closely similar passage is found in the Note Book, and there what Bracton regards as the true doctrine is ascribed to Martin, that is, doubtless, to Martin of Pateshull[6]. Now it has long been known that the law on this point was fixed by an ordinance[7]. The Record Commissioners when printing that ordinance in their edition of the Statutes seem to have thought that the best authority for it was a copy in the Red Book of the Exchequer, where it

1 Prov. West. c. 22.
2 Prov. West. c. 9, 10.
3 Br. f. 285.
4 This is of interest as showing some sympathy with the smaller landowners who procured the Provisions. The same leaning is betrayed by the vigorous argument in favour of free alienation without the lord's consent; see f. 45 b.
5 Br. f. 359–60; see also f. 344 b.
6 *Note Book*, Case 1291.
7 The Statutum de Bissextili in the common editions of the Statutes.

is dated 9th May 1256, but that this date was questionable[1]. There is much higher authority; for the ordinance, as one would naturally expect from its form, is on the Close Roll with the date just given[2]. This fixes that date as certain. It is a close writ directed to the justices of the bench reciting that there have been differences of opinion and providing that for the future the 29th of Feb. shall be reckoned as making one day with the 28th. This decides the dispute against Bracton. But this is not all; Bracton himself was present at the making of this ordinance. The enrolment ends with these words, "This writ was provided and framed in the "presence of the king, Richard Earl of Cornwall, Richard "Earl of Gloucester, Henry of Bath, Henry de la Mare, "Henry of Bratton, Walter of Merton and others of the "King's Council." So of course Bracton knew of the writ; we may well suppose that he said all that could be said against the making of it, for it ran counter to what seems to have been a pet theory of his; but after this there can have been no doubt as to what was law.

Part not written after 1256.

Another indication of date must be mentioned; much has been made of it by Dr Güterbock and rightly. As an example of a gift dependent on a contingency Bracton takes "I give you this land if Earl Richard shall be made King of "Germany[3]." Now Richard was elected king in January and crowned in May 1257[4] and it is natural to argue that he cannot have been elected, at least cannot have been crowned, when Bracton wrote this passage; it would be somewhat pointless to take as illustration of a contingency an already accomplished fact. But it is further urged that the words cannot have been written before the death of Richard's immediate predecessor, William of Holland, who did not die until January 1256. This argument though often repeated seems unsound. There was at least one earlier time at which it was probable, or (which is equally to the point) was thought probable in England, that Richard would be King or Emperor.

[1] *Statutes of the Realm*, vol. 1, p. 7.
[2] Rot. Cl. 40 H. 3, m. 12 d.
[3] Br. f. 47.
[4] Mat. Par. vol. 5, p. 601, 640; vol. 6, p. 341.

Already in 1250 during the lifetime of Frederick the Second the Pope having entertained Richard with marked honour, the rumour got abroad in England that Innocent would make an Emperor of the Earl[1]. At the end of the year Frederick died. In his account of the next year Paris says that the Pope offered the Empire to Richard, and that Richard refused it, whereupon the Pope turned to William of Holland[2]. For some years however he pressed the kingdom of Sicily upon the unwilling Earl; Richard he wished to have as an ally, for Richard was very wealthy[3]. Of course the kingdom of the Romans was not the Pope's to give, either de jure or de facto. Still just at that time to be the papal candidate or nominee was to have a good chance. It seems certain then that in 1251 Englishmen were speculating as to Richard's chance, and at any time between 1250 and the coronation in 1257 wagers may have been laid that the crafty Earl of Cornwall would despite his protestations some day wear the imperial crown. Still the year 1256 is certainly the year to which the allusion most naturally points.

Conclusions as to date.

To sum up the whole matter. The book seems to be the unfinished book of one who died in 1268, who for anything we know never published what he had written[4], who perhaps to the hour of his death hoped to resume his task and sometimes jotted down a new note in the margin of his manuscript, who in 1258 was deprived of the rolls that he had been using, who never revised his work as a whole after 1256, who was seriously engaged on it after 1250, who relied for his law chiefly on cases decided before 1240, who regarded such cases as *vetera judicia*. Why he left it unfinished we cannot say; perhaps the loss of the rolls was irreparable; perhaps his duties as a hard-worked judge left him no leisure; perhaps the voice of law was silenced by the clash of arms; perhaps sweeping innovations, such as the Provisions of Westminster, demanded changes in his text which he had not the energy

[1] Mat. Par. vol. 5, pp. 111, 112.
[2] Ibid. p. 201.
[3] Ibid. pp. 347, 432, 457.
[4] As before noted (p. 27) the great mass of MS. is descended from one into which an interpolation had been made after 1275.

to make; at present an answer could be no better than a hazardous guess.

§ 6. *Of Bracton's Selection of Authorities.*

Selection of authorities very remarkable.

The later the date to which the book is assigned the more remarkable is Bracton's selection of authorities; but any way this is remarkable enough. We are almost justified in saying that what he writes is a treatise on the law of England as administered by two judges, Martin Pateshull and William Raleigh. Stress must be laid on this point, for it will be of much importance hereafter; therefore of Pateshull and Raleigh a little should be said.

Martin Pateshull.

Martin Pateshull was from the beginning of Henry's reign the foremost, perhaps in an untechnical sense we may say the chief, of the king's professional judges. He was not chief justiciar; that title belonged to Hubert de Burgh, who of course was no lawyer; the chief justiciarship was not a post for a lawyer, at all events for a mere lawyer. But in any list of the regular justices Pateshull's name so constantly precedes all others that he must have enjoyed some pre-eminence, though perhaps not of a very definite kind. He was a churchman, archdeacon of Norfolk, dean of St Paul's[1]. He seems to have acquired a high reputation for learning and industry. It was hard work to go circuit with him, so strenuous and zealous a judge was he[2]. Rolls extant, and for the more part in print, enable us to trace his movements in eyre after eyre; from other sources we can discover but very little about him. He is nearly the first, if not the very first, Englishman, who becomes famous as a learned industrious judge and no more. He died on the 14th of Nov. 1229[3].

[1] Hardy's *Le Neve*, vol. 2, pp. 308, 482.

[2] *Royal Letters*, Henry III. vol. 1, p. 342.

[3] That he died in 1229 is beyond all doubt. It is a fact attested by several first-rate chronicles. See Mat. Par. Chron. Maj. vol. 3, p. 190; Annales Monastici, vol. 1, p. 73 (Tewkesbury); vol. 3, p. 115 (Dunstaple); vol. 4, p. 421 (Worcester); Annales Londonienses, vol. 1, p. 28. But Sir Travers Twiss (vol. 1, pp. xiv–xv) has attempted to keep him

William Raleigh.

William Raleigh did not die until 1250, but his career as a judge came to an end some ten years earlier. Of him there is more to be said, since he becomes for a few years a striking figure in the history of England. He had already been for some time a judge in the royal court when the troubles of 1234 raised him to the highest place. In 1232 the king broke with Hubert de Burgh and in his stead appointed Stephen Segrave chief justiciar of the realm[1]. On this followed the rising of the Earl Marshall and the delivery of Hubert from his prison at Devizes. The king was forced to dismiss his alien councillors and Segrave along with them. At Ascensiontide in 1234 the reversal of Hubert's outlawry was pronounced in a great assembly of prelates and barons by the mouth of William Raleigh. Henry did not fill up the vacant justiciarship, but it seems plain that during the few next years Raleigh was the premier judge, travelling about with the king and hearing those pleas which followed the king. He stood well with the king, was his trusted servant and councillor. We read how in 1237 the king deputed him to demand an aid from the barons[2], how in the same year he went on the king's behalf to watch the legatine council at St Paul's, how he sat there in his surplice and canon's cope[3], for besides being treasurer of Exeter he was a canon of St Paul's[4]. But he did not long enjoy the royal favour. In 1238 the see of Winchester became empty. The king was bent on obtaining it for his wife's kinsman William of Savoy, bishop elect of Valence; but the monks wished for Raleigh, objecting to the king's candidate that he was a man of blood. Henry's angry retort alluded to Raleigh's judicial career—"He has killed more men with his tongue than the Elect of

alive until 1232, on the ground that in Bracton's text (f. 50 b) a case is cited from an eyre of Pateshull in A.R. 16. The case is given in the Note Book (Case 1294) as coming from the eyre of A.R. 10-11. Of sixteen MSS. of Bracton at which I looked fourteen referred in the plainest figures to A.R. 11; only two, OB and MN, gave A.R. 16. Finally, if all known MSS. mentioned A.R. 16, this evidence would be absolutely worthless when compared with the express testimony of the chronicles and the silence of the rolls and the feet of fines.

[1] Mat. Par. vol. 3, p. 220.

[2] Mat. Par. vol. 3, p. 380.

[3] Mat. Par. vol. 3, pp. 416, 417.

[4] Hardy's *Le Neve*, vol. 1, p. 414; vol. 2, p. 403.

"Valence has with his sword[1]." The monks for a time gave up Raleigh and elected Ralph Neville the king's chancellor; but the king induced the pope to quash the election. Meanwhile other chapters looked to Raleigh as to one who would make a good bishop, one to whom the king could not possibly object. In February 1239 he was elected bishop of Coventry and Lichfield, in April bishop of Norwich. He chose Norwich and was consecrated in September. But Winchester was still vacant; the monks would not have William of Savoy; nor when he died would they have Boniface of Savoy; in September 1242 they again chose Raleigh and despite the king's opposition the pope confirmed their choice.

Henry then set himself to persecute Raleigh persistently and vindictively. No principle, so far as we can see, was involved in the persecution; the royal will had been crossed and the king was obstinate and spiteful. Raleigh would not give way; he was driven from the country. Not until 1244 could the king be reduced to reason. In the spring of that year peace was made and Raleigh returned to England. All Englishmen, says Paris, save only some of the king's clerks who had fomented the discord, were glad at his return; *Benedictus qui venit in nomine Domini* was on their lips, for they had the highest hopes that good would come to king and kingdom from his ability and sound sense[2]. Very soon after this we find him taking a somewhat leading part in a parliament which resisted the king's demands for money and propounded a large scheme of reforms[3]. But we do not learn that he became an active politician, and he seems to have lived on fairly good terms with the king[4]. In 1249 he left for France to live there frugally; he was sadly in debt, the struggle with Henry having cost him dear. He never returned to England and died at Tours in September 1250[5].

The king's quarrel with Raleigh.

It has been necessary to notice these things because the question may for a moment arise whether Bracton in choosing as one of his two highest authorities a judge who became

Was Bracton's attachment to Raleigh political partizanship?

[1] Mat. Par. vol. 3, p. 494.
[2] Mat. Par. vol. 4, pp. 359, 360.
[3] Mat. Par. vol. 4, p. 362; Stubbs, *Const. Hist.* vol. 2, p. 62.
[4] Mat. Par. vol. 4, p. 590; vol. 5, pp. 1, 58, 94.
[5] Mat. Par. vol. 5, pp. 96, 117, 179.

famous for his resistance to the king, may not be betraying some political partizanship. But this seems improbable. It is true that Raleigh came to be regarded as a champion of national and ecclesiastical rights; men compared him even to Becket and to Anselm; Paris dilates on his wrongs. But there is no reason to believe that either Henry or Raleigh was contending for a theory of church or state; the quarrel was personal; the bishop had got what the king wanted. Besides (and this seems decisive) it was Raleigh the bishop, not Raleigh the judge, who withstood the king. Raleigh the judge, whose judgments Bracton cites, was the king's confidential minister. Paris, on the other hand, though he speaks highly of Raleigh's legal knowledge, ability and general character, evidently did not regard his judicial career as matter for much praise. Raleigh was a Matthew called to the apostolate from the receipt of custom; at his consecration there was joy in the presence of the angels of God over a repentant sinner[1]. It can hardly then be a respect for constitutional government, a wish to curb the king, or indeed any political thought or feeling, which makes Bracton single out this judge from among all his fellows to be a father of law for all generations[2].

Bracton's neglect of all judges except Pateshull and Raleigh.

Now in Bracton's pages we may count the occurrences of the names of these two judges, Pateshull and Raleigh, by the dozen; of any other judges he hardly ever speaks. The sum total of what he has to say of them is I believe this:—He mentions one case[3] or perhaps two cases[4] which came before Simon Pateshull, the great judge of John's reign, possibly a kinsman of Martin. Certain distinguished persons get named, because they accompanied Martin in some of his eyres and being of high rank were named before him in the commission, e. g. the Bishop of Durham and the Abbot of Reading; they however were not professional judges. William of York who

[1] Mat. Par. vol. 3, p. 617.

[2] For an estimate of Raleigh's character, see Stubbs, *Const. Hist.* vol. 2, p. 302.

[3] Br. f. 422 b.

[4] Br. f. 50. Most MSS. have here *Simonis* or *S.* but *M.* occasionally appears and may be the right reading.

became bishop of Salisbury is mentioned thrice[1], Roger Thurkelby perhaps once[2]; both of them were among the foremost judges of their time. Of Robert Lexington whose judicial career was very long we hear merely that on two occasions he erred[3]; of his brother John of Lexington, who at one time kept the king's seal, we hear that he also erred, and we hear no more[4]. The name of Simon of Ropelay, who occasionally took assizes, occurs once[5]; and there is notice of an attaint taken by Engelard of Cigogné and others; but Engelard the keeper of Windsor Castle was most certainly no lawyer[6]. All this is insignificantly little; or rather significantly little, for it makes Bracton's selection of authorities an extremely well marked, distinctive, selection. He is silent about his own colleagues, the men who sat with him on the bench, and of their immediate predecessors, though among them there were several who became famous as judges, in particular Gilbert Preston, Roger Thurkelby, Henry of Bath, William of York, Robert Lexington. But this is not all; having gone back to a past time he apparently picks and chooses among the judges of that time. In particular he says hardly anything of a judge who was a contemporary of Pateshull and Raleigh, who rose to a more exalted place than was attained by either of them, who certainly was an able lawyer if he was an unscrupulous politician. He hardly mentions Stephen Segrave, about whom some words are necessary since a statement directly at variance with that which has just been made is found in a book of high authority.

Bracton's treatment of Segrave.

From the beginning of the reign Stephen Segrave has a place among the royal judges second only to that of Pateshull, and before Pateshull's death he was already high in the king's favour[7]. He joined in the plot of those who schemed for the fall of Hubert de Burgh, and when that fall was

[1] Br. f. 130 b, 183, 374. Consecrated in 1247. See as to his reputation as a judge, Mat. Par. vol. 5, pp. 374, 534, 545.

[2] Br. f. 413, comp. Twiss, vol. 6, p. 258. The MSS. are about equally divided between Thurkelby and Raleigh; but if it be Raleigh then the date is wrong.

[3] Br. f. 286 b, 418.

[4] Br. f. 45.

[5] Br. f. 292 b.

[6] Br. f. 293 b. As to Engelard's adventures see *Pleas of the Crown, Gloucester*, 1221, Introduction, p. xiij.

[7] Mat. Par. vol. 3, p. 187.

compassed (29 July 1232) he received the justiciarship and was associated with Des Roches, Passelew and Rievaulx in the government of the realm[1]. Within two years (April 1234) the counter revolution threw him from power. He seems to have made himself very detestable to the insurgent barons and they ravaged his lands[2]. He fled to the abbey of St Mary des Près near Leicester and found it convenient to revive a tonsure which had been long neglected[3]. The king called him to a strict account and for a while he remained in disgrace. He paid a heavy fine and was received back again into the royal favour. He once more became a member of the royal council[4] and we find him taking part in its judicial proceedings; but seemingly he never served again as one of the regular judges. He died in 1241. Now certainly he was a great lawyer. A man of what was reckoned humble birth[5], he had made his way to the very highest station, had been chief justiciar of England. Why did Bracton neglect him?

But did Bracton neglect him? It here becomes necessary to join issue humbly and respectfully with a great historian, the highest authority on such a question, except only Bracton himself. Dr Stubbs has written thus:—"It is a curious point......that Bracton, although himself clearly a constitutional thinker, gives the preference in almost all cases to the decisions of Stephen Segrave, the justiciar of Henry III, who supplanted Hubert de Burgh, and was practically a tool of the foreign party. It is clear that Segrave, though a bad minister, was a first-rate lawyer[6]." Now the facts are these. Bracton mentions Segrave but eight times. Only on three occasions does he notice a difference of opinion between Segrave and any other judge. Twice the difference is between Segrave and Raleigh; Bracton does not state very

[1] Mat. Par. vol. 3, p. 220, 240.
[2] Ibid. p. 292.
[3] Ibid. 293.
[4] Ibid. p. 368, 404, 524.
[5] Mat. Par. vol. 4, p. 169.
[6] *Const. Hist.* vol. 2, p. 190, note 3. Bracton's respect for Segrave seems to have struck Dr Stubbs so forcibly that again on p. 294 he says, "Some of his [Henry's] bad ministers were among the best lawyers of the age. Stephen Segrave, the successor of Hubert de Burgh, was regarded by Bracton as a judge of consummate authority."

clearly whose opinion he prefers: but once, as it seems to me, he agrees with Segrave[1], once with Raleigh[2]. Once again Segrave differs from Pateshull and Bracton takes Pateshull's side[3]. The 'almost all cases' therefore in which Bracton gives the preference to Segrave resolve themselves into one case or possibly two cases. This is almost all the notice that is taken of a famous judge and chief justiciar, one who undoubtedly was, as Dr Stubbs calls him, a first-rate lawyer. On five other occasions his name is barely mentioned[4]. There is no one citation from the roll of any eyre on which Segrave was sent without Pateshull, though of such rolls there can have been no lack. On the other hand citations from the eyre rolls of Pateshull and Raleigh occur in great abundance. This point, of infinitesimal importance in a history of the English constitution, must be of much importance to any one who professes that he is editing Bracton's Note-Book and therefore I am constrained to insist upon it.

Explanations of Bracton's choice of authorities.

Various explanations may be offered, though this can be but guess-work. The apparent preference of Pateshull and Raleigh may really be the result of mere chance; Bracton by some means or another got possession of Pateshull's rolls and Raleigh's rolls; Segrave's he had not got, they were at Leicester or Kenilworth; all rolls should by rights have been in the Treasury; Bracton could only use habitually such as had come to his hands by happy accident. More interesting would it be to detect some political inclination; Bracton "himself clearly a constitutional thinker" may have slighted the authority of "the tool of the foreign party". But Bracton's claim to be counted among those who sought

1 Br. f. 35 b; about petty serjeanty; the passage seems to be an interpolation, and the author's own opinion is left in much doubt.

2 Br. f. 438; curtesy of second husband. See Case 1182.

3 Br. f. 130 b; forfeiture of wife's inheritance by husband's felony.

4 On f. 16 b a case is cited from an eyre of Segrave in Kent, but the judgment was given at Westminster, so this is the citation of a De Banco Roll. On f. 357 Segrave and Raleigh give a *responsum* to that inquisitive person Richard Ducket. On f. 369 b it is noticed that a certain case on the De Banco Roll, (it is Case 397 in the note-book,) was decided in the presence of Segrave and the Chancellor. On f. 293 b and 377 b two Coram Rege cases are cited as heard by Segrave.

to limit the kingly power rests mainly on a passage the authenticity of which is extremely doubtful, and William Raleigh whatever he may have become as bishop, was as judge distinctly a king's friend. More probable does it seem that the bias was not political, but juristic, that Bracton regarded Pateshull and Raleigh as the heads of a school of law and of lawyers. Of rival schools of lawyers Englishmen know little. For centuries past our scheme of justice has been so concentrated that rival schools have been impossible. Every lawyer has belonged to the one orthodox school of Westminster, or has been simply 'no lawyer'. Blackburn, Mansfield, Hale, Coke, Littleton do not found sects; Bracton himself, so far as we know, founded none. But in the first half of the thirteenth century it may well have been otherwise and it was otherwise abroad. The rapid influx of civil litigation into the royal court must have demanded a rapid development of common law: and there well may have been strong and permanent differences of opinion among judges and lawyers even about fundamentals. There may have been Proculians and Sabinians. In particular the respect to be paid to Roman law may have been a hotly contested point. We do not know how this was; perhaps we hear only one side of the case; the school of Pateshull and Raleigh still lives and is eloquent; its rivals, if rivals it had, perished for they had no spokesman to match against Bracton. Lastly we may not forget that when Bracton visits Devonshire, he chooses a Raleigh to sit with him on the bench, and that he holds land of the Raleighs. Possibly he was the pupil, the clerk, the friend of Bishop William.

At any rate the fact remains—the apparent preference of two judges of a past time above all other judges past or present. But in order to duly weigh this fact we must descend to particulars, and consider whence it was that Bracton obtained his lore of cases.

Particulars of his citations.

He cites as I reckon 494 cases; this includes some vague allusions to matters of uncertain date. The nature of his citations may be seen from the following table which is approximately correct.

Pleas in the Bench, A.D. 1217—1234 . . .	271
Pleas which followed the king, A.D. 1234—1240 .	15
Pleas from eyres of Pateshull	117
Pleas from eyres of Raleigh	34
Later cases expressly dated	9
Undated cases	48
	494

His method of vouching cases, when once it is mastered, will seem very orderly and intelligible. The citations fall into three great classes; a few specimens of each shall be given[1]. Three classes of rolls used by him.

1. Citations of De Banco Rolls, the rolls of the Bench. A complete citation of this kind will name no judges and no court, but will mention the names of the parties, the county, the year, and the term: thus— De Banco Rolls.

Item ad hunc ultimum casum facit expresse de termino S. Hillarii anno Regis Henrici sexto in comitatu Staffordiae de Rannulfo Comite Cestriae et Priore de Kenelworth de ecclesia de Stoke. (f. 246 *b*.)

...probatur de termino Paschae anno Regis Henrici xv°. in comitatu Essexiae de Geruasio de Aldermanbury. (f. 407 *b*.)

Ad idem facit quod habetis de termino Paschae anno Regis Henrici xvj°. in comitatu Suthantoniae de Engelardo de Cygoiny. (f. 407 *b*.)

Et ad hoc facit de termino S. Michaelis anno Regis Henrici xiiij°. incipiente xv°. in comitatibus Suffolkiae et Essexiae de Emma quae fuit uxor Rogeri filii Swani. (f. 312.)

2. Citations of Coram Rege Rolls. These are much rarer. Bracton will say of a case vouched from such a roll that it is among the pleas which follow the king and will give the year, but no term; thus— Coram Rege Rolls.

...ut inter placita quae sequuntur Regem, anno regni Regis Henrici xix°., assisa ultimae presentacionis inter Priorem de Wallingford et Rogerum de Quincy et Simonem de Thennore. (f. 16 *b*.)

[1] It is the more necessary to explain this matter at length because the person who made indexes for Sir Travers Twiss seems to have thought that every case belonged to some eyre.

...ut inter placita quae sequuntur Regem anno xx°. assisa nouae disseisinae de Waltero de Emdene et Alicia filia Ernaldi. (f. 195.)

Eyre Rolls.

3. Citations of Eyre Rolls. In making these Bracton names the county and almost always the judge. Often he specifies no year, because to do this is needless. Pateshull, for instance, visited Yorkshire more than once; therefore it will not do to speak merely of his Yorkshire eyre; one must be more particular, must say his last eyre, or his eyre of such a year. On the other hand it is quite sufficient to speak of Raleigh's eyre in Bedford, or Leicester, or Buckingham, for (at least as principal judge) he visited those counties but once, so there can be no confusion. Here are specimens:—

...ut de Itinere Episcopi Dunholmensis et M. de P. in com. Ebor. anno Regis Henrici tertio, assisa nouae disseisinae, Si Rogerus de Halgheton. (f. 50.)

...in Itinere M. de P. anno Regis Henrici decimo in com. Ebor. de Emma quae fuit uxor Raymeri le Franceys. (f. 304 *b*.)

...ut de ultimo Itinere M. de P. in com. Ebor. anno Regis Henrici x°. de quadam Juliana. (f. 298.)

Et de hac materia inueniatur in Itinere M. de Pateshulla ad assisas nouae disseisinae capiendas et gaolas deliberandas in com. North., assisa nouae disseisinae, Si Rogerus de Deneford. (f. 169.)

...ut de Itinere W. de Ralegha in com. Bedf., assisa nouae disseisinae, Si Milo. (f. 170.)

...ut de Itinere W. de Ralegha in com. Bedf., de quadam Emma Bouastra. (f. 312.)

Explanation of this classification.

That the most important of the plea rolls would fall into these three classes is just what we ought to expect if we have read Bracton's account of the judicial organization of his time. There are justices travelling about under various commissions; sometimes they are sent on a general eyre *ad omnia placita*, sometimes their power is more limited, they are to deliver the gaols and take the assizes, sometimes they are specially authorized to take just this, that and the other particular assize. In a classification of plea rolls, the rolls of cases heard under these special commissions should form a separate class as Assize Rolls. A few exist, notably two of

Bracton's and several of Preston's. But Bracton does not cite rolls of this class; they would not be first-rate authority, such assizes being taken by a single professional judge with lay associates, or sometimes by four laymen. Then there are justices *residentes in banco.* Lastly there are others who go about with the king, who are at the king's side. The yet extant rolls at the Public Record Office will fulfil this expectation; we find rolls of these three great classes.

No eyre rolls used but those of Pateshull and Raleigh.

Now with one exception[1] Bracton, I believe, cites no Eyre Roll that is not a roll of Pateshull or of Raleigh. On the other hand he has more than a hundred cases from Pateshull's rolls, more than thirty from Raleigh's. Perhaps this fact will not seem so significant to the reader as it does to the writer of this. Therefore be it said that there must have been a very large number of other Eyre Rolls; many exist at this day; many have perished. Thus, for example, take the first eyre of the reign; judges were sent into all the counties of England except eight[2]; every county would have its roll; Bracton cites but one of these rolls; from the roll for Yorkshire, which county was visited by Pateshull and the Bishop of Durham, he vouches a dozen cases. Again in 1227 commissions were issued for most of the counties[3]; Pateshull's journey in Kent, Essex, Hertford, Norfolk and Suffolk supplies Bracton with a profuse crop of cases; Segrave was sent into six counties, other judges were sent elsewhere; Bracton culls no one case from their rolls. By 1250 the number of Eyre Rolls of Henry's reign must have amounted to a hundred and more. Of course the very fact that there were so many rolls would have obliged a text writer, even if he had access to them all, to make some choice, to study and cite just a few. What I am at present concerned to urge, is that any other text writer or student than Bracton, would very possibly have thought it best or found it convenient, to read and to cite an entirely different set of rolls; to all seeming there must have been a vast supply.

[1] Br. f. 413; as to this case from an eyre of Thurkelby see above p. 49.

[2] Rot. Cl. vol. 1, p. 380 b.

[3] Rot. Cl. vol. 2, p. 205 b, 213.

His choice of De Banco and Coram Rege Rolls.

When Bracton cites the De Banco Rolls and the Coram Rege Rolls, he does not as a general rule name the judges who heard the case. This is very natural for without their names the reference is complete and verifiable, and but seldom do their names appear upon the roll. These citations therefore do not explicitly set before us Pateshull and Raleigh as the two judges whose decisions are really sound law. Nevertheless the same principle or partizanship, caprice or accident, which governed the citation of Eyre Rolls, seems to have been at work.

Differentiation of the Courts.

We are here tempted towards the slight anachronism of speaking of a Court of King's Bench and a Court of Common Pleas. It would be but slight for the differentiation of these two courts was almost accomplished; still it is best to adhere to the terminology of the time and we do not yet read of a Common Bench and a King's Bench. To judge from the extant plea rolls it would seem that at latest from the year 1234 onwards the state of affairs was this:—Regularly every term judges sat on the Bench (*in Banco*) at Westminster, and the process which brought suitors before them was process compelling attendance *coram justiciariis nostris apud Westmonasterium.* At the same time the king was going about the country attended by judges; the process compelled attendance *coram nobis ubicunque fuerimus in Anglia.* What is more, there was an incipient differentiation of business; we find defendants who have been ordered to follow the king pleading to the jurisdiction and relying on the well known words of the Charter about *communia placita*[1]; but as yet the special competence of each court is only vaguely defined. Again, we find that errors committed by the justices in the Bench can be corrected *coram ipso rege*[2]. Lastly there are two independent sets of rolls and between them there is this difference, (this will explain Bracton's method of citation,) that the rolls of pleas in the Bench are terminal rolls, while the rolls of pleas which follow the king are annual rolls[3]; it may be that

[1] See Cases 1213, 1220.

[2] See Cases 1166, 1189, 1190.

[3] I am here speaking only of a few years immediately following 1234; I believe that this distinction soon disappears.

cases might be heard *coram rege* out of term as well as in term. In short we may fairly say that there were two different courts, provided that we do not take this phrase to necessarily connote two permanently distinct bodies of judges[1]. The judges were the king's own servants dismissible at pleasure, and seemingly he moved them about as pleased him best. With this explanation, we may say that a Court of Common Pleas had by this time become a distinct court. There is more difficulty about saying that the pleas which followed the king were pleas in the Court of King's Bench, for the germs of what came to be three distinct jurisdictions are hardly yet to be distinguished, namely (1) the jurisdiction of the King's Bench, (2) that of the King in Council, (3) that of the King in Parliament. As a rule the cases found on the rolls of *placita quae sequuntur regem* seem to have been heard by some of the professional judges whom the king kept by his side, occasionally by the king himself with, or possibly without, their assistance, for the notion that the king himself may not act as judge is not of Bracton's time[2]. But sometimes we read that the case was adjudged *coram consilio domini regis*, and sometimes the presence of many prelates and barons, named or unnamed, is noticed and the court seems a parliament[3]. As yet however all these cases are enrolled on the same rolls. Whether by anticipation we call the adjudicating body Parliament, Council, or King's Bench, these cases are *placita quae sequuntur regem*. Even distinctly legislative acts are recorded among these pleas[4].

I have described this as being the state of affairs from 1234 onwards. It seems possible that a definite stage in the development of the Courts should be assigned to that year. I believe that the first of the series of rolls of pleas which follow the king, is a roll extending from the summer of 1234 **Two Courts after 1234.**

[1] It may be also that a case begun before the king might be sent before the Bench and vice versa, see Cases 1107, 1116.

[2] See especially Br. f. 108. Also Abbrev. Placit. p. 107 (Surrey), p. 119 (Kent), cases stayed because the king was not present; also Case 1182.

[3] See Cases 1108, 1133, 1172, 1189, 1190, 1220, 1221, 1227, 1235, 1273.

[4] See Cases 1117, 1215, 1217.

to the summer of 1235 (A.R. 18—19). This I mean is the first of that series which is now extant. On this fact by itself little stress should be laid, for the series after that date is very imperfect. But this is also the earliest roll of 'king-following pleas' that Bracton cites[1], while for cases in the Bench he goes back as far as 1217. From the rolls yet preserved it may be gathered, that from the very beginning of Henry's reign there were justices sitting in the Bench every term, except when an eyre in many counties took them all away from Westminster. A large number of their rolls we have, though not a perfect set. Now the court that they held seems, in Bentham's phrase, omnicompetent. On the same roll, on the same membrane, one may find appeals of felony, writs of right, actions of debt, the peculiar commodities of the King's Bench and those of the Common Pleas. Further, especially during the King's minority, one may sometimes find it said about a case on one of these rolls, that it was adjudged *coram consilio domini regis*; such a case is generally one which touches royal rights[2]. The Council certainly sat as a judicial body, but seems to have had no roll of its own; its judgments are recorded on the rolls of the Bench. So when the minority is over, on these same rolls one reads of judgments delivered *coram ipso rege*[3]. Doubtless the king when he came of age did justice in person; the doubt is whether he did it so usually and systematically that there was a separate and continuous set of rolls for cases which came before him and such judges as he might choose to have by his side. Occasionally important cases were evoked or adjourned before him, but seemingly he did not as yet make regular judicial progresses through the country, or only did so occasionally[4].

[1] The printed text, f. 241 b, has one such case from A. R. 16; but I have seen thirteen MSS. which give A. R. 18, not one which gives any other date.

[2] See Cases 12, 67, 73, 81, 167, 354, 741, 743, 857, 1306.

[3] See Cases 258, 268, 339, 393, 986, 1551.

[4] Already in 1226 he ordered that the assizes of mort d'ancestor and novel disseisin for five particular counties should be summoned before him, Rot. Cl. vol. 2, p. 154. I have seen a fine levied before him at Leominster on what seems to have been this occasion. The Justiciar, the Chancellor, Robert Lexington, William Fitz Warin and William of London were with him.

Now here it should be remarked that this roll of A.R. 18—19 begins exactly at a memorable date, Whitsuntide 1234. From the beginning of the reign until 1232 Hubert de Burgh was the chief justiciar. In that year, as already said, he fell, was supplanted by Stephen Segrave. The formidable revolt of the Earl Marshall, the threats and persuasions of the bishops compelled the king to another change of mind. Just before Whitsuntide 1234 he turned against Segrave and the foreigners: Hubert and the insurgent barons were inlawed, or rather their outlawry was proclaimed a nullity. No justiciar was appointed; the king as it seems intended to be for the future his own first minister. Now it is just at this moment that begins the first yet extant roll of pleas which follow king Henry, and the first roll of that class which Bracton has cited, a roll full of reminiscences of the recent insurrection, of the misrule of Segrave and Des Roches. It looks as if the king had determined to get all the highest justice of the realm done under his own eye by professional judges who would not be too powerful, whom he could trust, whom at all events he could watch. It was a recurrence to an old practice; Henry would do what his forefathers had done; but the consequence was that thenceforth there were what we can not but call two separate tribunals, each with its own record[1].

The Rolls de Banco and Coram Rege that Bracton used were those of Pateshull and Raleigh.

Now Bracton cites the rolls of the Bench for almost every term from the beginning of the reign up to and including that for Trinity 1233. I think that he certainly has a case from Hilary 1234[2] and one from Easter 1234[3]. Here he quits this series of rolls, though many later members of it there must have been when he wrote and not a few remain to this day. He turns to the rolls of pleas which followed the king and cites cases from the rolls for A. R. 19, 20, 21, 22,

[1] I find that, without knowing it, I have come to the same conclusion as Dugdale, who about this time begins to divide the judges into two classes. Mr Foss (vol. 2, p. 182), who does not appear to have looked at any plea rolls, dissents, and rightly if he only means to deny that there were two permanently constituted bodies of judges with different titles. But from this time at latest there were pleas before the king and pleas in the Bench, judges with the king and judges at the Bench, and the same judge was not in two places at once.

[2] *Note Book*, Case 836.

[3] Br. f. 230 b.

23, 24; in all fifteen cases. Here his continuous chain of citations is broken. After a considerable interval there come six cases from A.R. 29—33. If now we look to the list of judges who sat on 'the Bench', we find that from the beginning of the reign until the early part of 1229 Pateshull was evidently the foremost judge of the court; he sits below no one unless it chances that an Earl or the Justiciar himself, Hubert de Burgh, is present. In 1229 Pateshull died. Within a year Raleigh is on the Bench, but not as premier judge. He sits below Thomas Multon and below Stephen Segrave, but Segrave is very seldom present and Raleigh generally has the second place; at length even Multon gives way to him. Raleigh sits on the Bench until the summer of 1234, until the exact moment when Bracton ceases to cite the rolls of the Bench. Raleigh then becomes the principal judge attendant on the king's person and such he continues to be until he is made a bishop in 1239. It is almost exactly, if not quite exactly, from this period that Bracton cites pleas which followed the king; records of later date than the time when Raleigh was consecrated, these Bracton could not obtain or else he thought them of comparatively little value[1].

We have been long in coming to the Note Book. The reason for the delay was this. It was necessary to establish that Bracton's selection of rolls was very distinctive, perhaps determined by accident and necessity (for all rolls should have been in the Treasury) perhaps determined by political partizanship, juristic theories, personal friendships, but at any rate distinctive. His is a treatise on English law as administered by Pateshull and Raleigh. Not every lawyer's

[1] Mr Foss (*Judges*, vol. 2, p. 449) says that there is no evidence of Raleigh having acted as a judge after A. R. 19 (A. D. 1234–5). This is a mistake due I think to the fact that, as Raleigh was going about with the king, he did not usually sit on the Bench or take part in the ordinary assize work. But see Br. f. 169 b; a case before Raleigh in A. R. 23. See also this Note Book vol. 2, pp. 165, 167, 208, 228, 255. He seems to have been doing justice until very shortly before his consecration in Septr. 1239. Bracton cites but a single case from A. R. 24. Raleigh's consecration took place just before the beginning of that regnal year. But some at least of these Coram Rege Rolls do not exactly cover a regnal year; they begin some months earlier. The roll for A. R. 24 I have not found.

note book would be like his note book; not every student would have had access to just the same rolls; there were many other rolls; there had been and were other great judges.

§ 7. *Of the Note Book.*

And now to the Note Book. It is a stout volume, about 11 inches high by 9 broad, wears a handsome binding and carries on its back three labels thus lettered:— | Placita et Assisae 1—24 Hen. III. | Mus. Brit. Jure Emptionis. | 12,269 Plut. CLXXII. C. | The two lowest labels have been placed there since the book was acquired for the national collection, but the binding is of older date and so I am informed is the legend on the topmost label.

Description of the Note Book.

Externals.

A vellum fly leaf at the beginning has on its front in ink— *Purch^d of Cochran* 12 *Feb.* 1842 (*from Holmes's Library of East Retford*[1]). On the back of this fly-leaf is written in pencil—*The first two folios of the first quaternion are wanting. Each quaternion contains* 12 *leaves.*

Fly-leaf.

This last statement is not quite true. The book is now made up of 24 quires or quaternions of parchment; but of these two are imperfect and one is abnormally long. Each perfect quire should consist of six pieces of parchment laid one inside the other and bound together by their middles, so as to present twelve leaves and twenty-four sides. The first quire has lost its outside sheet, so that, had the pages been numbered back and front in the modern fashion, pp. 1, 2, 23, 24 would be wanting. Undoubtedly this sheet once existed and bore writing. The matter which stood on what, but for the loss, would have been the twelfth leaf (pp. 23, 24), I have been able to supply with some certainty in a manner explained below. What now is the outside sheet of this first quire is sadly damaged. Seemingly this quire was at one

Number of quires.

Loss of a sheet.

[1] John Holmes of East Retford published at intervals between 1828 and 1840 a catalogue of his large collection of printed books; but this does not comprise MSS. His library was, as I gather from his Preface, the outcome of purchases made by him.

time lying loose from the rest of the book and suffered ill usage. The rest of the book is well preserved.

Other losses (if any) occurred long ago.

At the beginning of the second quire (top margin of what now is f. 11), there is an important legend written in what seems to me a hand of the fifteenth century. This however, most unfortunately, has been in part erased. Apparently the erasure is due to some person who, perhaps in the same century, numbered the first 34 leaves of the book. He scratched out part of the legend in question in order to make room for "fo. xj^{o}". Possibly a skilled palaeographer might still read the whole. What I can read is this:—

Md quod iste liber continet in se viginti quatuor quarterna et constat.........
ex dimissione...............

Number of leaves.

The writer therefore seems to have known the book as containing four and twenty quires; hence we may infer that it ended then where it ends now, that nothing has been lost since his day.

The ninth quire has but eleven leaves. The extracts from a certain roll come to an end half-way down the front of the eleventh leaf; the rest of the front and the whole of the back of that leaf are blank; the tenth quire begins with a new title and extracts from a new roll. I infer that here there has been no loss, merely an economizing of parchment. The tenth quire again is ampler than the rest; it has fourteen leaves. The leaves have been recently numbered in pencil from first to last. Altogether there are 287 leaves (first quire 10 leaves, ninth quire 11 leaves, tenth quire 14 leaves, twenty-one quires of 12 leaves each, total 287 leaves). The quires begin with the leaves numbered 1, 11, 23, 35, 47, 59, 71, 83, 95, 106, 120, 132, 144, 156, 168, 180, 192, 204, 216, 228, 240, 252, 264, 276.

Seemingly when the book was originally made the quires were numbered consecutively, the number being placed in the bottom margin of the first leaf of each quire and catchwords were put at the end of each quire. These have suffered much from the binder's shears; but I see no reason to believe that anything has perished out of the middle of the book save

the last leaf of the first quire. In most cases it is plain that the quires still follow each other in right order.

Probably the end of the book is lost.

But the end of the book has in all probability disappeared. The text now breaks off at the very end of a quire and at what may or may not be the end of a case. From the book itself we cannot learn whether anything has been lost. Some information on this point I shall presently supply from another quarter. That the loss is not of recent date we may gather from the already ancient statement that there were four-and-twenty quires.

The front and back of almost every leaf are covered with writing. The number of lines on a page varies considerably decreasing as we go through the book from 53 to 40. This makes the end much handsomer and more legible than the beginning.

The contents how written.

The contents may be briefly described as transcripts of entries on the judicial rolls of the first twenty-four years of Henry III. These transcripts have been made by several different scribes. Certainly there were as many as four; I think that there were five. I believe that the hand-writing of all of them may be safely ascribed to the middle of the thirteenth century or thereabouts. The extracts from the rolls do not follow each other in strict order of date. The arrangement, we may say, looks as if chronology had been tempered by catastrophes. We proceed with some regularity from earlier to later rolls and then leap back to earlier rolls which have been omitted. In some cases as we turn over the MS. we can see reasons for this procedure. A clerk, for example, has been copying pleas from the sixteenth year, and brings his work to an end in the middle of a quire; another clerk has begun another quire with pleas of the seventeenth year; here then there were three or four blank leaves which would serve for pleas from the ninth year. Having observed many small indications of this kind, it seems to me that the collection was rapidly made by some one who could command the services of several clerks. He set them to work transcribing from different rolls and pieced the book together as best he could. And there are signs of haste; in writing one

part of the book two clerks constantly relieved each other at very short intervals. The work of these various copyists could not always be quite neatly fitted together; hence a few blank pages. In one case a blank thus left was afterwards utilized. Extracts from a roll for the twenty-fourth year (the latest roll used) end on f. 195 b; extracts from a roll of the second year (the earliest roll used) begin on f. 197. The interval contains in several different hands (1) the discussion of a hypothetical case, (2) a disquisition on leap-year, (3) the assize of bread, (4) two decided cases, one from the fourth, the other from the tenth year. The assize of bread is given in French, (this is the one piece of French that occurs,) and is written in what seems a later hand than any other employed upon the book. With the exception of these apparently interpolated entries, the whole collection looks as if it had been made at one time. About the middle of the thirteenth century some man had this book made for him.

The notes how written. That man's writing may yet be seen. The margins are rich with notes. These notes are due to two different persons. One of them has written but very few. For the sake of distinction I call him "the occasional annotator", and he seems to me to have been one of the copyists. The other I call "the usual annotator". His handwriting has a strongly marked character of its own, very upright and in general very distinct, but I believe that it may be safely described as a legal hand of the middle of the 13th century. That he was a contemporary of the copyists and had the note book made for him there can be little doubt, for in a few instances he has written pieces of the text. He has written the heading which announces a new term and also the first word or two of the first entry under that heading, thus starting the transcriber on his task[1]. The book then was made for him and under his eye.

A glance at my printed text will show that the marginal notes are capriciously distributed. On page after page there will be nothing in the margin, and then again for a while

[1] See f. 3, 35, 45. I think that he also wrote the first few words of the second case in the book.

almost every entry will have its note. The annotator seems to have returned to the work at several different times and made notes by fits and starts, taking up now one part of the book and now another. In some instances a case has two notes apparently made at different times. Again the comparatively few notes made by him whom I call the occasional annotator, occur in batches, chiefly in one batch (f. 50—54). They are of the same kind as the other notes, but rather less hastily written. I take him to have been an amanuensis of the usual annotator. Of the import of these notes much must be said hereafter; at present we are still concerned with externals.

Later marginalia.

There are a few hasty marginal scribblings in what I take to be a hand of the sixteenth or fifteenth century, just single words such as *Corona* and the like, showing the title under which the case would fall in an Abridgement or Digest. The person who wrote these or some contemporary of his has numbered some of the quires. About the same time too some one with the book upside down scrawled a precedent of a writ of entry on the margin of f. 285 b. At a quite recent date some one has observed in the middle of f. 145 b, that in the beginning God made man in his own image. His offence is venial compared with that of one who must be charged with having made some wanton and purposeless erasures near the beginning of the book (f. 2, 2 b, 11).

Relation of the Note Book to the Rolls.

We must now pass for a moment from the British Museum to the Public Record Office. For about half of the terms from the rolls for which this book has extracts, there are no extant rolls; for about half there are extant rolls. But fortune has been capricious; in many cases there are two still extant rolls for the same term; for one term there are three. It is, I may observe, a common thing to find what we may call duplicate or triplicate rolls. These will be rolls for the same term, recording the same cases in almost the same words; yet it will be plain that one is not a copy of the other. The same cases will be found on the two, but not in the same order. In general under each heading denoting one of the days for the return of writs, e.g. the Octave

Duplicate Rolls.

of S. Hilary, there will be found on both rolls the same cases; but not in the same order, and no rearrangement of membranes would bring the cases into the same order. Further, on a closer examination it will appear, that though the two records of one case will agree in substance, still there will often be many small verbal differences, variances such as copyists do not make. And more important differences are occasionally found; in particular when both rolls agree that the parties pleaded to issue or prayed judgment, one roll will and the other will not record how at a later day a judgment was given or a verdict found. Sometimes this judgment will have been given or this verdict found at a time considerably later than the term with which the roll deals, and it will be recorded on the roll by way of postscript. In short, to put the matter technically, one of the duplicates will give a *Postea* not to be found on the other. The origin of these duplicates seems this, that besides the principal roll kept by the protonotary, each judge had his roll kept for him by a clerk, and these rolls were used to check each other. Some cases referring to this practice occur in our Note Book and Bracton discusses what is to be done when there is discord between several rolls[1]. How it comes about that the cases occur in different, often very different, order, on the different rolls, I can not here discuss. My present point is that when there is a roll extant for a certain term, we can not at once say that this roll was used by the maker of the Note Book. Most fortunately however we have other means of telling very surely which of the rolls now forthcoming were in his hands.

Marks on the margin of the Rolls connecting them with the Note Book.

When having copied some pages of the Note Book, I took my transcript to the Record Office, in the hope of finding the original records, I expected that the work of hunting for my cases would be tedious. To my surprise and delight on taking up the first roll I discovered that the work was done for me. Every case that I wanted had against it a mark of an obvious, unmistakeable kind. In the margin of the roll down the whole length of the case someone had drawn a firm

[1] Br. f. 352 b; Cases, 70, 149, 1411, 1455.

heavy line, in colour a dark rusty brown; to look at, it was much such a line as might have been drawn by the old fashioned red-lead pencil. I soon learnt to know that this 'scoring,' as I call it, was the work of the man who had the Note Book made for him[1].

Proof of the connection.

Whenever there was a scored roll, the cases in the Note Book agreed perfectly with the cases on that roll, saving the immaterial omissions, of which hereafter, and saving mere clerical blunders. When there was a roll not scored, the cases in the Note Book did not agree perfectly with the cases on that roll; the cases did not always occur in the same order; the Note Book occasionally gave *Posteas* which were not on the roll. I found that the copyists who wrote the Note Book had very faithfully obeyed the direction to copy implied in the scoring. Very rarely indeed did I find any case in the Note Book which had not been scored; so rarely, that it seemed fair to attribute the few instances to mere inadvertence or accident. More frequently a scored case had not been copied. As regards the majority of the rolls this happened so seldom that one might properly set it down to the clerk having scamped his work; only as regards two or three rolls should I say that the number of cases scored but not copied, was too considerable to be accounted for by this supposition; and about these we may perhaps hold, that the maker of the Note Book changed his mind after he had marked out the work for his scribes. In some instances the copyist has apparently obeyed what he took to be his instructions, with a slavish obedience; he has left out the important end of a case, because the mark on the roll did not go far enough, or has copied just the first lines of the next case, because the mark went a little too far[2].

Words written on the rolls by the compiler of the Note Book.

The person who scored the rolls did not content himself with this. In some instances he has numbered the membranes

[1] In many cases the middle of the line springs out of what seems a rudely drawn capital N, standing perhaps for Nota. Marks of a similar kind are, I believe, often found in MSS. from which transcripts have been made, and are the work of the director of a scriptorium. The marks on the rolls are, I take it, not indelible, but of course I have not attempted to prove this.

[2] See my notes to Cases 75, 320, 710, 711, 935.

at their tops, while at their bottoms he has scrawled the words *Visus est*, as much as to say, 'I have examined this 'sheet.' Then over against the scored cases he has sometimes written a word or two. These words are such as to show that he was collecting cases and had various categories in his mind. Thus he writes—*De recto* (A Writ of Right), *De dote* (An Action for Dower), *Ass' no'* (An Assize of Novel Disseisin), *Quis aduoc'* (An Assize of Darrein Presentment), *De sum' et attach'* (Summonses and Attachments, Mesne Process), *De communibus* (Common Form). Occasionally he even writes *Error* on the roll. A more important note occurs over against an action between the Prior of Merton and the men of Ewell[1]. A long particularization of the villein services demanded by the Prior is on the roll. We find that this has been omitted in the Note Book where it is merely said that the Prior claimed 'certain' services. Looking again at the roll we see scribbled in big letters *Loquatur mecum de hoc capitulo;* the meaning seems plain—He must have a talk with me before he copies this entry and I will tell him what to leave out[2].

The cases are copied with omissions. As a general rule when a case is taken from the roll it is copied into the Note Book word for word; but certain omissions, which were considered immaterial, are habitually made. The most common omission is that of the names of attorneys, jurors and the like; occasionally too when there are numerous defendants, the name of the first of them only will be copied. Such omissions are usually indicated by the use of the words *talis* and *et infra*. Thus if an assize of novel disseisin be brought against ten persons, the Note Book will say that the assize comes to recognize whether the Prior of Merton *et tales*, or whether the Prior of Merton *et infra*, disseised William Smith; *et infra* means that there is more upon the roll. Dates again are frequently omitted, the omission being indicated by *tali die;* so are the formal parts of charters and the ends of some common formulas; but in general an *etc.* in the Note Book represents an *etc.* on the

[1] Case 1661.

[2] Some cases are marked with the word *Volo*; but I have not been able to connect this with the Note Book.

roll. Only in very few instances have I noticed anything that could be called an abridging or abstracting of the entry on the roll; as a rule the entry is copied verbatim with such omissions as I have just mentioned.

The copyists have done their work fairly well, though, as it seems to me, quite mechanically. They are guilty of omissions and repetitions of the kind usual with those who are paid to copy what they do not care to understand. Sometimes they leave blanks to represent words which were ill written on the roll; they deal very roughly with proper names; occasionally they are guilty of very stupid blunders, for instance, one of them habitually writes *sic'*, or even *sicut* in full, when he finds *Ric'* (*Ricardus*) on the roll, to the great detriment of good sense; they distribute stops in a way which shows that they do not think about the meaning of what they write. The writer of the last half of the book was, I should say, much more careful and intelligent than his fellows; his work is in general very legible and trustworthy. **The copying is fairly accurate**

Having observed the manner in which the rolls had been marked, it seemed to me possible to supply the matter which stood on one of the two lost leaves of the Note Book. As already said the outside sheet of the first quire has perished. What stood on the half of this which would have made the first leaf, I cannot say, for the Note Book now begins with extracts from a term for which no roll has been found. But the gap occasioned by the loss of the other half of this sheet, occurs in the middle of extracts from a term for which there are two rolls, and one of these is scored. The hiatus in the Note Book occurs between the middle of Case 67 and the middle of Case 68. Between these two cases I found on the scored roll eight cases which were scored. These I have copied and printed as an Appendix to my third volume. The mass of matter thus printed is considerably too long to have stood in the Note Book between Cases 67 and 68. Something must be allowed for the omissions of immaterial particulars which the copyist of the Note Book would have made; but enough cannot be allowed to bring down my **The missing page supplied from the roll.**

Appendix to the requisite size; perhaps then the copyist omitted one of the eight cases. That one of them was in the Note Book is made the more probable by this, that the same case at a later stage appears in another part of the Note Book, and the annotator has there written in the margin *alibi supra*, meaning that the same case was to be found above, which would only be true if it stood on the page now lost[1].

Part of the missing end of the Note Book might be restored.

The method employed for restoring this lost page might, I thought, be also used for determining the question, whether anything and, if anything, what, had been lost from the end of the Note Book. The process could only be applied in a one-sided fashion; it might give positive but could not give negative results. The fact that a roll was not scored, would prove nothing, for the maker of the Note Book might have had a duplicate roll. The fact that a roll was scored, would go to prove that extracts from it were once in the book; though this would not be quite certain, for the direction to copy might never have been obeyed, or the copy might have been made in some other book. A search, (I dare not say an exhaustive, but still a diligent search,) through the plea rolls of the first forty years of Henry's reign, (I must gratefully acknowledge the help given me by Mr W. F. Noble,) resulted in the discovery of but two rolls, from which there were no extracts in the Note Book, and which yet were scored in the to me familiar fashion. This result if small was satisfactory. One of these two rolls was a roll for the eyre of 1221, that eyre of Martin Pateshull and the Abbot of Reading in the mid-western counties which Bracton has made famous; the county was Worcester[2]. Now cases from this eyre, Leicestershire and Staffordshire cases, are the last things now in the Note Book. The probability therefore seems very strong that the marks on this Worcester roll were obeyed; extracts from that roll are just what we might expect to follow cases heard in other counties during the same eyre. This Worcester roll, again, has one inscription

[1] Appendix to vol. 3, Case 8; Case 1411.

[2] Assize Rolls, M. 6, 31. 1.

which deserves note. There is a case on it which has been disordered by the intrusion of a postscript; one ought to read what comes below before what stands above. Against this he who scored the roll has scribbled (the words are faint but legible)—*primo scribatur ibi postea supra;* this is a direction to the copyist to transpose two sentences. We may then conclude with some certainty that the Note Book once had extracts from this roll. The second of the two rolls now in question, was the record of the eyre of A.R. 3 in Lincolnshire, an eyre in which Pateshull apparently took part and from which Bracton cites a case[1].

What else, if anything, may have been lost from the end of the book we cannot decide; but the fact that no scored roll has been found for any year from A.R. 22 to A.R. 40 both inclusive, a period from which very many rolls are still preserved, tends towards proof that there cannot have been many extracts in the Note Book of later date than the latest of those which now appear there. Beyond A.R. 40 my search has not been systematically prosecuted, and it must be confessed that the discovery of any rolls of considerably later date, bearing marks of just the kind that has here been described, would bring some of my inferences to the ground; but having compared roll after roll, case by case, with my transcript of the Note Book, it seems to me quite certain that the marks on the rolls were put there by the compiler of the Note Book.

§ 8. *Of the Relation between the Note Book and Bracton's Treatise.*

It is now to be considered what reasons there are for supposing the Note Book to be Bracton's. **Why Bracton's Note Book?**

The comparison of handwritings is not one of the tests that can be applied, for we have no manuscript of Bracton's treatise, (at least I have seen none,) that can claim to be the **No proof from comparison of handwritings.**

1 Tower Roll, No. 1. See Br. f. 298; this case is on the roll.

autograph. On the two rolls which record his labours in Devonshire as a justice of assize, there are some corrections and interpolations, which very likely were made by his hand; they seem to be just of the kind that would be made by the judge himself. There does seem to me to be much likeness between them and the notes in the Note Book; but they are too brief to be trustworthy material; the inference that Bracton made them is but an inference; I have no skill in comparing hands; therefore no stress whatever is laid upon the resemblance. As to the few words occasionally written on the margin of rolls by the person who 'scored' them, these are hasty scrawls made with some blunt instrument, and cannot be profitably compared with the notes in the Note Book. We must look then beneath the external form to the matter which our book contains, and our first argument will be founded on the choice of rolls whence extracts have been made.

The First Argument: The Selection of Rolls.

The selection of Rolls.

Now speaking largely we may say that the compiler of the Note Book has used just the set of rolls that Bracton used. Such is the general result, but the comparison must descend to details, and the three classes of rolls may be taken separately.

1. Rolls of the Bench.

Rolls of the Bench.

Detailed comparison.

Some difficulty is occasioned at starting by the loss of the earliest rolls of this class and the loss of the Note Book's first page. Henry III. was crowned on the 28th Oct. 1216. Almost the whole of his first year was taken up by the civil war, which was ended by the treaty of Lambeth on the 11th Sept. 1217. Thereupon a court began to sit at Westminster, and the first pleas after the war were of Michaelmas term 1217 (A.R. 1—2). Bracton had a roll for this term and the Note Book has extracts from it. But it is not for another two years, namely until Michaelmas 1219 (A.R. 3—4), that we find an extant roll. The Note Book has extracts

from the roll for Easter and Trinity 1219 (A.R. 3). These are preceded by fifteen cases, the first now in the book; they have no heading because what was once the first page has disappeared. They certainly belong to the interval between Michaelmas term 1217 (A.R. 1—2) and Michaelmas term 1219 (A.R. 3—4) and they do not belong to Easter or Trinity 1219 (A.R. 3). The terms left open for them are Hilary, Easter, Trinity, Michaelmas 1218, and Hilary 1219. Their date should be fixed.

The earliest rolls.

The adjournments seem to point to a Trinity term; this among other reasons led me when I had them printed to ascribe them to Trinity 1218 (A.R. 2). Bracton cites several of them; he cites Case 5 from Trinity A.R. 2; Case 8 from *term. S. Mich.* A.R. 2 *post guerram*, that is probably from Michaelmas 1217 (A.R. 1—2); Case 12 as *inter prima placita post guerram* (a rather vague phrase); for what seems to be a later stage of Case 11, he vouches the roll of Michaelmas A.R. 2—3 (1218), while Case 9 is spoken of as having come before Pateshull in A.R. 2 but no term is mentioned. This evidence is somewhat perplexing; but we must remember that the same case often appears in different stages on several different rolls. Bracton cites five cases from Trinity 1218 (A.R. 2) and one from Michaelmas 1218 (A.R. 2—3), none of which are in the Note Book; he cites no case, at least expressly, from either Hilary or Easter 1218 (A.R. 2). Again on one occasion he cites a case (f. 302) *in secundo rotulo post guerram de termino S. Trinitatis.* This led me at one time to believe that the Court did not sit in Hilary or Easter 1218 (A.R. 2); but on examining the feet of fines I had to abandon this notion; the Court sat in all four terms of 1218. I now think that there was but one roll for the three first terms of that year. In the early years of the reign it is not uncommon to find a roll covering more than one term. This would explain the citation "in the second "roll after the war, from Trinity term." Also it will explain a note in the margin of the Note Book over against Case 9, namely, *De term. S. Trin. ann. eodem ij°.* The annotator has probably put this somewhere about the place where the

transactions of the Easter term end and those of the Trinity term begin. If that be its meaning I do not think that it is quite in the right place, for in Cases 5, 6, and 7 we read of what was done three weeks after S. John's day i.e. Midsummer. On the whole I still think that the fifteen extracts in question, or all but the first two or three, belong to Trinity A.D. 1218 (A.R. 2), but that they may well have been preceded in the Note Book by a few extracts from the Hilary and Easter terms.

Detailed comparison continued. In that case the maker of the Note Book had the rolls for all terms from the beginning of the reign down to and including Trinity 1218. From Michaelmas 1218 (A.R. 2—3) there are no extracts. The Court sat in that term and Bracton cites a solitary case. So this we must account an instance of Bracton having had a roll which the maker of the Note Book is not proved to have had. From Hilary 1219 (A.R. 3) we get no extracts; but Bracton cites no case; no fines have been found; an eyre on a large scale was going on, and we may conclude that the Bench at Westminster was unoccupied[1].

From the next nine terms the Note Book has extracts and Bracton has citations. We pass therefore unchecked to Trinity 1221 (A.R. 5). From this the Note Book has nothing. Bracton apparently has one case. But I have found no roll and no fines and think it very doubtful whether the Court sat. On the morrow of Trinity, Pateshull, Hareng and Lexington, three of the usual judges of the Bench, began an eyre in the west which seems to have kept them away throughout the summer and far into the autumn[2].

From the next term again, Michaelmas 1221 (A.R. 5—6) there is nothing in the Note Book. Bracton does not cite any cases distinctly from Mich. A.R. 5—6; but he cites eight from Mich. A.R. 6. This seems at first sight ambiguous; but six out of the eight are essoin cases which would, I suppose, be adjudged on the first days of the term, and I infer therefore

[1] See the letters of 26th Jan. 19 in Foedera, vol. 1. p. 154.

[2] I have spoken of this eyre in *Pleas of the Crown for the County of Gloucester*, A.D. 1221.

that the term to which they belong is Michaelmas 6—7; the essoins of that term would be taken before the coronation day.

The next term for which the Note Book has nothing is Trinity 1223 (A.R. 7) and from this Bracton vouches two cases. No roll has been found and no fines; but Bracton's citations are perhaps correct.

Term now follows term in the Note Book until Trinity A.R. 10 is reached. That and the next two terms are unrepresented. So they are in the treatise also. No roll is extant and I have seen no fines. Probably the Court did not sit; a great eyre[1] was taxing the judicial resources. In the Note Book the pleas for the next term, Easter 1227 (A.R. 1/1) are described as '*Placita...post reditum iusticiariorum de itinere*[2]'. On these follow cases from Trinity term of the same year, but it seems clear[3] that after these the Note Book proceeds to give without any new heading, (the omission may be due to mere carelessness,) cases from the Hilary and Easter terms of 1228 (A.R. 12). Thus a leap is made over Michaelmas 1227 (A.R. 11—12). From that term Bracton draws no case; I have found neither roll nor fine; an eyre in many counties was begun in September[4]; probably the Bench was without an occupant. Trinity 1228 (A.R. 12) is unrepresented in the Note Book, the treatise, the rolls, the fines.

No check now occurs until Hilary 1232 (A.R. 16). Bracton has one citation; the Note Book no extract; no roll is found, but there were judges taking fines at Westminster and at times Raleigh was of them. As to the Trinity term of the same year we are everywhere met by negatives; no extracts; no citations; no roll; no fines. This was the time when Raleigh made that tour in the midlands which supplied Bracton with many decisions. The Note Book has nothing from Easter 1233; but Bracton has nothing from this term; apparently a Court was sitting at Westminster, but Raleigh was not there. Without any break the Note Book has

[1] Rot. Cl. vol. 2, p. 151.
[2] Note Book, vol. 1, p. 193.
[3] Ibid. p. 219.
[4] Rot. Cl. vol. 2, p. 213.

extracts from the four next terms, ending with Easter 1234 (A.D. 18). This is the last roll from which it gives extracts and with it Bracton's continuous series of citations from the rolls of the Bench comes to an end.

Summary as to the Rolls of the Bench.

To sum up then, the Note Book has extracts from all the rolls from which Bracton took his cases, except four viz. that for Michaelmas 1218 (A.R. 2—3) from which one case is vouched, that for Trinity 1221 (A.R. 5) from which one case is vouched, that for Trinity 1223 (A.R. 7) from which there are two citations, that for Hilary 1232 (A.R. 16) which yields a solitary case. This list of exceptions might perhaps be yet further reduced, for it seems doubtful whether the Court sat in Trinity 1221 or Trinity 1232, and very possible that the apparent mention of those terms in the treatise is due to some mistake of the author, his copyists or editors. But taking things as they stand, it is plain that if Bracton had rolls from these four terms he has used them very sparingly.

2. Rolls of pleas which followed the King.

Pleas which followed the king.

As regards the rolls of pleas which followed the King the case is very simple; Bracton and the maker of the Note Book had just the same six consecutive rolls.

3. Eyre Rolls.

Eyre Rolls.

The Eyre Rolls cannot be so briefly dismissed. Bracton had about twenty eyre rolls of Pateshull and five of Raleigh. The Note Book gives selections from but eight rolls, all of them are rolls of Pateshull, all save one of them are rolls used by Bracton. These selections from eyre rolls are the last things in the Note Book. We have above seen reason for believing that the end of that book has perished, also for believing that the part that has perished comprised extracts from the Worcester eyre roll of 1221 and the Lincoln eyre roll of 1219. To both of these Bracton has appealed for cases. There is nothing, as it seems to me, to be said against the supposition that, were the Note Book as complete as once it was, it would give us extracts from all the eyre rolls cited by Bracton. But then there is nothing to be said for

that supposition. Such rolls as are extant give us no aid, for unfortunately, with I believe five exceptions, just those rolls which we would gladly examine are not to be had; not one of Raleigh's eyre rolls is forthcoming. The exceptions consist of five rolls from the memorable eyre of 1221, one from Shropshire, two from Warwick, two from Gloucester. None of them is scored; but no inference can be drawn from this, for as already said, there were often duplicate and triplicate rolls.

Summary as to the selection of rolls.

But now reviewing our comparison as a whole, the result though by no means conclusive must arouse the belief that Bracton and the maker of the Note Book were but one person. Both begin collecting cases from the rolls of the Bench at the same point. Both at the same point cease taking cases from the rolls of the Bench and begin taking cases from the rolls of pleas which follow the king. Of rolls of the latter kind both use precisely the same six, the six which just cover the time when William Raleigh held the placita coram rege. Both, working years after Pateshull was in his grave, seem either to treat the rolls of his eyres as the best of all eyre rolls, or to happen to have those particular rolls ready to hand. But we must pass to another argument.

The Second Argument: The Selection of Cases.

The selection of cases.

If all or almost all the cases cited by Bracton were found in our manuscript, we might say with some confidence that this was not the result of chance. It should here be explained that only a small part of the matter which appears on any roll has been copied into the Note Book; only the cases which were thought of more than usual interest have been taken. The proportion borne by the selected cases to the whole mass of matter on the rolls varies greatly from roll to roll. It cannot be estimated very accurately, but taking one roll with another I should say that not more than a tenth part has been copied. Now that so small a selection should

comprise all Bracton's cases and yet that Bracton should have had nothing to do with the choice, would be most unlikely. A calculation of chances is indeed impossible for some cases were doubtless more interesting than others, and a certain agreement between different lawyers as to what cases were of most value might be expected; still the coincidence would be so remarkable that we might reasonably infer that it was not fortuitous.

Difficulty in identifying cases.

But our case is by no means so strong as that here supposed. As already explained, the Note Book has no selections from a considerable number of rolls, mostly eyre rolls, used by Bracton. But considering only those rolls from which there are extracts in the Note Book, the result to which I have come is, that among these extracts there are rather more than half the cases which Bracton vouches from the same rolls[1]. Some allowance must be made for mistakes of mine. I may well have failed to identify some of Bracton's cases. The proper names which occur in his text have been horribly distorted by copyists, for example an Archdeacon of Totness (Archidiaconus de Tottona) has become Alfridus de Cottone and Viel D'Engaine (Vitalis de Engaine) has become the Vicar of Gaine; this throws difficulties in one's way. Again a good many cases Bracton cites anonymously, that is to say, he merely states that a case about this or that matter will be found on a particular roll, but does not name the parties. It is sometimes hard for a modern to be certain whether he has found such a case; and if any mistake has been made by copyist or printer in giving the date, the case will hardly be found. That such mistakes have occurred is certain; still I would not attribute to them any weighty influence on the general result now under our consideration. Certainly not a few of the cases, which Bracton has cited and which yet are not in the Note Book, may be found just where they ought to be, on the rolls whence they are cited by the Bracton of the printed book; others I have not found; but on the whole considering how badly proper names have

[1] For details see the Table of Bracton's citations at the end of this Introduction.

fared, I have been surprised at the safety with which dates have passed through the hands of transcribers.

Altogether Bracton cites just about 500 cases and I believe that just about 200 of them will be found in this book, which contains in all just about 2000 cases, so that every tenth case in it or thereabouts has been cited by Bracton. This result, though it may not strengthen, will not I think weaken the argument founded on the selection of rolls made alike by Bracton and by the owner of the Note Book. Of course we cannot argue that when writing his treatise Bracton was wholly dependent on this book for his authorities. But we have known all along that this could hardly be true. Not until 1258 was he bidden to surrender the rolls which were in his possession, while probably he had finished the main part of his text two or three years before that date. We may guess perhaps that he had another note book with other cases in it. At the beginning of one set of extracts in our MS. there is written in the margin *De hoc termino nichil alibi*, and this suggests that the owner had somewhere else another collection of authorities.

Results of the comparison.

But the reader may ask, What need had Bracton of any transcripts of cases if the very rolls themselves were in his hands? The answer is, that, even with the aid of a note book, his feat of citing some five hundred cases scattered about in some fifty rolls was a gigantic feat of patience, industry, memory, and that without some such aid the feat would have been impossible. Imagine fifty rolls, each composed of twenty or thirty membranes, each membrane as long as one's arm, as broad as one's span, each membrane covered back and front with writing, whereon are no head-notes, no catch-words, nothing to guide the eye save the names of counties in the margin. Such was the raw material; to have transplanted five hundred cases directly out of this disorderly mass into their proper places in a systematic exposition of the law, would have been beyond the power of any man. Bracton, we may surely say, though he had the rolls themselves would have wanted a note book or several note books. Of course however we may not leap from this

Why did Bracton want a Note Book if he had the Rolls?

inference to the assertion that his note book or one of his note books has come to our hands, and it must be frankly admitted that had we no other evidence than what has already come before us, any such assertion would be rash; we might speak of 'curious coincidences,' say that 'not 'impossibly' this book was Bracton's, but beyond this we could not go.

Treatise and Note Book are alike unique.

Still the uniqueness of the treatise, the uniqueness of the Note Book should be had in mind. It is not as though we argued—'Here is a note book containing very many of the 'cases cited in "Sugden on Powers"; it must have belonged to 'Lord St Leonards.' Bracton's treatise with its five hundred citations stands quite alone. He is the one and only man of his time whom we know to have collected cases from the records. His successors, Britton and Fleta, abridging his work to meet the demands of lawyers, omit the citations. Of the uniqueness of the Note Book we may not speak quite so positively; still nothing of the same sort has yet been made public. We are dealing with rarities; with an unique treatise, with a collection of cases which, so far as we know, is unique; one in every ten of the cases in the latter is cited in the former; this is not an insignificant result.

The Third Argument: The Relation between Passages in the Treatise and Marginal Notes in the Note Book.

Marginalia in the Note Book.

We pass now to evidence of a more interesting kind, that offered by the notes in the margin of our book, and, leaving Bracton out of sight for a while, something should first be said of their nature and their date.

One part of the annotator's work no printed version could adequately represent. Many of the cases he must have studied carefully, pen in hand. In the manuscript one may see how he has touched up badly formed letters, corrected here and there a false concord, and 'expuncted' redundant words. When he has interpolated anything into the text attention will be drawn to the fact by a foot-note. Such

interpolations are not very uncommon. Sometimes a word which obviously was missing, for instance an all-important *non*, has been supplied; sometimes a proper name is inserted so as to explain an ambiguous *ipse, ille, suum*: sometimes a link of reasoning is introduced; but generally if there is much to be said, this is said in the margin.

His marginalia fall into three main classes. The largest consists of brief statements in general terms of the point decided by the case; statements not unlike the head notes of our modern reports. Occasionally we find mere catchwords which refer either to the matter of the case or the names of the parties, thus, '*Bastardia*,' '*De fine facto*,' '*De Bello Monte*,' '*Gorges*.' A much smaller but more valuable class is made up of criticisms and speculations; thus the word '*Error*' marks the decision as bad law; sometimes a reason is given for its condemnation, sometimes not; praise is bestowed by '*Bonum*,' '*Optimum*,' '*Magnum et bonum recordum*,' and the like; it is noted that since the case was decided the Statute of Merton has altered the law; or again the annotator speculates as to what would have been the judgment had the facts been rather different. In a third and smallest class we must place what seem to be references to other cases; a name is written which is not the name of any of the parties to the case against which the note is made, thus '*Nota Whitcherche*,' '*Nota Corbyn*,' '*Casus Radulphi de Arundelle similis isti*,' '*Fere casus Cole*.' Such allusions as these are enigmas to be discussed hereafter. The meaning of the other notes will in general be plain to a reader who has first studied the cases, but hardly to one who has not, for the notes are mere notes, intended for no eye but the annotator's and often have little or no grammatical structure. Nature of the Marginalia.

The date when the book was compiled we cannot fix with perfect accuracy; but we cannot go far wrong. It cannot have been earlier than the year 1240; a plea roll of A.R. 24 is the last of the series of rolls whence excerpts have been taken. On the other hand it can hardly have been later than 1256. There are two passages which to all appearance were copied on a blank page of the book after that book had Date of the Note Book.

come into existence. The first of these is a disquisition on leap year; and this is followed immediately by the second, which is an assize of bread[1]. The former is an elaborate argument in favour of what we know to have been Bracton's contention as to the true method of reckoning 'year and day,' when an essoinee is privileged to keep his bed for that period. We know also that on the 9th of May 1256, in Bracton's presence, the king and council over-ruled this contention, ordained that a 29th of February should be reckoned as forming but one day with the 28th[2]. It is improbable that after this any lawyer was at pains to set down in writing a long reasoned statement of a doctrine which had been thus exploded. The tariff known as the assize of bread there is reason for attributing to this same year, 1256; under that date the Annals of Burton relate that the justices who were sent throughout England to correct the weights and measures, published this assize[3]. The Annals give the document in Latin, the Note Book in French; but the tariff is the same. The appearance of a French document may cause a momentary suspicion as to whether this part of the Note Book was written so early as 1256; but this suspicion will be allayed when it is remembered that in 1258 the king's adhesion to the Provisions of Oxford was proclaimed in French as well as in English and Latin; indeed this is just the moment when French is taking its place beside Latin as a language for laws. Now the occurrence of these two documents one after the other, must suggest that they were copied into the Note Book in 1256 or thereabouts. The assize of bread was just being published and the problem of the bissextile was a warmly debated question pressing for an authoritative answer. The rest of the Note Book's text may have been transcribed some years earlier; but not before 1240.

Date of the marginal notes.

The date of the marginal notes is of course a different matter. They may have been written at intervals during a space of several years; but they cannot well be of much later date than the text. In the first place, it seems clear

[1] Cases 1291, 1292.
[2] See above p. 42.
[3] Ann. Monast. vol. 1, p. 375.

from evidence already mentioned that the annotator himself presided over and interfered with the work of the copyists[1]. In the second place, his writing would I believe be attributed by any expert much rather to the reign of Henry III. than to that of any Edward. In the third place, he thrice refers to changes in the law made by the Statute of Merton (1236) which once he calls 'noua gracia[2],' while he never expressly refers to any later legislation. To say that he never betrays knowledge of any more recent statute or ordinance, would perhaps be an assertion which no man now living is entitled to make; I dare say no more than that such betrayal, if any there be, has escaped me; but by means of footnotes referring to Bracton's text, I have tried to ease the task of any reader who will be at pains to consider this matter for himself. Now it seems improbable that any lawyer of a later time would have written all these notes without alluding, and that clearly, to such comprehensive enactments as the Statute of Marlborough (1267) or the Provisions of Westminster (1259), highly improbable that a lawyer of Edward's day would not have noticed that sweeping code which we know as the Statute of Westminster the First. Lastly, indications of date should be given by the names of cases noted in the margin, by such allusions as '*fere casus Cole*' and the like. Such success as I have had in deciphering these indications shall be described below: nothing has been found inconsistent with the conclusion for which I am now arguing. In only two instances has the annotator given us any easy means of settling a date. Twice and no more he names the judge who decided the case to which he alludes; in the one he names William of Wilton who was slain at Lewes (1264) and who first appears as a judge in 1247; in the other he names 'H. de Bratton,' a judge of whose history we have already said something, and to whom we now return.

Coincidences of the notes with Bracton's text.

Now the resemblances between the notes and passages in Bracton's text are many and striking. But let us not make too much of this. Having come to the conclusion that Bracton and the annotator are contemporaries we shall

[1] See above p. 64. [2] Cases 1409, 1881, 1975.

expect that they will in many instances say much the same things; for both are English lawyers, both are dealing with the same subjects, both are often discussing the very same decisions. The minds of all lawyers ought, it may be said, to be very much alike, for there is a strict legal orthodoxy, from which he who departeth doth surely err; even verbal agreement will be frequent for the legal vocabulary is small. Perhaps there was much less agreement among the good lawyers of the thirteenth century about elements of the law than there would be among good lawyers of our own day; still coincidences if they are to prove anything must not consist merely in the statement of the same rules of law in the same or very similar words. Consequently no attempt will be made to collect here the numerous instances in which Bracton and the annotator say the same things; when this happens attention is drawn to it by a foot-note; but a few examples will now be noticed in which the agreement is of such a kind, that, when they are taken all together and in conjunction with the evidence already discussed, they make a strong case for holding that Bracton and the annotator were but one man.

Examples.

(1) Bracton[1] treating of the cases in which a donor is not bound to warrant a donee, says that the terms of the gift may except certain particular persons from the scope of the warranty, as e.g. if I say "I and my heirs will warrant against all the world except so and so." To prove that such an exception will be effectual, he cites from the Warwick eyre

Trussel's Case and William Briwere.

(A. D. 1221) of the Abbot of Reading and Martin Pateshull an assize of mort d'ancestor, *Si Willelmus Trussell.* He immediately adds that the donor may not be bound to warranty even though he has received the donee's homage; warranty may be excluded by the terms of the gift, as e.g. if the charter says, that in case the donee be impleaded, the donor shall not be bound to warrant or give an exchange, "sicut de Willelmo de Bruere in multis cartis suis." These last words refer doubtless to the William Briwere, who when he died an old man in 1226, had for some forty years been a

[1] Br. f. 390 b.

trusted royal servant, had amassed great wealth and liberally endowed religious houses, especially in the west country[1].

Now in the Note Book[2] we find the assize *Si Willelmus Trussel*, not indeed at the stage at which Bracton cites it, but at a later stage, when it came before the Bench. The case had nothing to do with William Briwere. The charter then in question was one granted by Amicia mother of William Basset to Hugh of Chawcombe with an express saving of the rights of the heirs of William Trussel. It was decided that under this deed Basset was not bound to warrant Chawcombe against Trussel's heirs. The annotator states in the margin the rule involved in this decision. He then adds, "It will be the same if homage be taken 'saving the right of "every one,' or with an express exclusion of warranty secun-"dum W. Briwerre."

This connection then of Trussel's case with Briwere's opinion or practice as to the receipt of homage, we find both in the treatise and in the Note Book, and the coincidence is of a very striking kind, particularly when we reflect that Briwere died some twenty years before either book can have been compiled. With Briwere's transactions Bracton may well have been familiar; his son, William Briwere the younger, was bishop of Exeter from 1224 to 1244, and a judge who took the Devonshire assizes would often have seen the charters of the founder of Dunkeswell, Torre and Polslo. Still the number of lawyers living between 1250 and 1260 to whom Trussel's case would have recalled Briwere's name cannot, one would suppose, have been very large, even if it was a very uncommon thing for a donor to expressly stipulate that the receipt of homage should imply no warranty.

Juste propter ius sed iniuste propter iniuriam.

(2) The formula of novel disseisin inquires of the recognitors whether the plaintiff has been disseised *iniuste et sine judicio*. This might suggest that it is possible to disseise a person *sine judicio* and yet not *iniuste*. Such however is not, as it seems to me, Bracton's doctrine. Whenever a person is

[1] In my note vol. 1, p. 159 I have called him Brewer. I must beg his pardon. He was of Norman family and the full form of his name was Brieguerre. See Stubbs' Hoveden, Vol. 3, p. lxxii.

[2] Case 196.

disseised without a judgment, he is disseised unjustly. The strictly limited cases in which a disseisor may be lawfully ejected by the true owner *flagrante disseisina*, are met by the theory that in such cases the true owner has not yet lost seisin in law (*possessio civilis*), though he has lost seisin in deed (*possessio naturalis*); so that here the disseisor is not even disseised, much less unjustly disseised. Suppose then that the true owner be thoroughly dispossessed, that the time for self-help is past; he disseises his disseisor; shall we say that he has done this *iniuste*? Bracton gives his answer in these words[1], "Juste facie prima propter jus, sed iniuste propter iniuriam, quia sine judicio" (Justly if we regard only the right of property, but unjustly because of the injury to possession). This jingling gloss we find in the Note Book also and in the same context[2]:—"Juste propter jus, set iniuste quia sine judicio." Justices are convicted of false judgment, jurors of perjury, because they do not observe the true theory of possessory actions, and think that a man may be disseised without a judgment and yet not unjustly.

Montacute v. Bestenore.

(3) Careful readers of Bracton's treatise will perhaps remember his citation of *Montacute* v. *Bestenore*[3], first because it brings out clearly the difference between villein status and villein tenure, secondly because it suggests that the judges of 1219 considered that a tenant in villeinage holding by services of the most 'villeinous' kind, including merchet and uncertain tallage, could not lawfully be ejected by the lord so long as he performed the villein services. This very interesting case is in the Note Book[4]. The judges held that Bestenore was a free man though he held in villeinage. Now both Bracton and the annotator commenting on this case find the distinction between villein tenure and villein status in the fact that the free man who holds in villeinage can leave his tenement if he pleases; "quia potest relinquere tenementum," says the annotator; "quia poterit relinquere villenagium et ut liber homo

[1] Br. f. 205.
[2] Case 530.
[3] Br. f. 199 b.
[4] Cases 70, 88.

recedere," says Bracton. About leaving the land, the record itself says nothing.

Ripton v. Abbot of Ramsey.

(4) This case occurs in the Note Book[1]:—The Abbot of Ramsey disseises Richard of Ripton; Richard brings an assize, but before the case is heard has recourse to self-help and disseises the Abbot. The Abbot pleads no special plea; the assize proceeds and the facts are found. The judgment is that Richard has recovered his seisin and that the Abbot be amerced, but that Richard also be amerced for the usurpation. Commenting on this case the annotator speculates as to what would have happened if the Abbot had brought an assize:—"I believe," he says, "that the latter "assize (the Abbot's) shall proceed, and the former assize "(Richard's) is extinguished and annulled as a penalty for "having taken the law into his own hands when he should "have recovered by judgment." Bracton[2] cites this case and indulges in a similar speculation; he even thinks that in Richard's assize it was open to the Abbot to counterclaim (*agere de reconuentione*) and so recover seisin. The case itself, we may notice, does not prove that the Abbot could, either by cross action or by counterclaim, have reobtained possession; but it suggested the same speculation to the annotator and to Bracton.

A tenement bound by warranty.

(5) Still more to our point is the following. Bracton[3] says that the obligation of the donor to warrant the donee may not be a merely personal obligation, it may bind some tenement, that is to say, the burden of the contract may 'run with' land of the donor and bind that land in the hands of a purchaser. "A tenement may be thus bound expressly or tacitly; expressly, as if it be said in the deed of gift 'I and my heirs will warrant this gift out of such and such 'a tenement into whosesoever hands it may come,' in which case the thing is expressly bound to warranty, as is shown by the case concerning R. de Renge, Pasch. A. R. 16 com. Mid.; tacitly, as if the feoffor has at the time of the gift assets for the warranty, in which case, even without express

[1] Case 360.
[2] Br. f. 226, 226 b.
[3] Br. f. 382.

words, what he then has is bound; for a personal obligation is of no avail unless the person bound has property out of which he can make the exchange in case of need." Now I understand Bracton to mean by this, that on principle the warranty should always be treated as binding not only the warrantor's person but also all the lands that he has when he makes the contract, whether anything be expressly said on this point or no; for a warranty would be a useless thing if the warrantor could for all practical purposes destroy it by conveying away his property to others. But Bracton has not got a case that goes nearly this length; his authority goes no further than the point that by express bargain the burden of the warranty may be imposed upon a specific tenement.

The case that he cites is easily recognizable in the Note Book[1]; it shows how a house in London was expressly bound to warrant land at Stepney. It interested the annotator; on two occasions has he marked it as *Optimum*; meditating over it pen in hand he has drawn a helmeted head. The result of his meditation is a note to the effect that 'from this case it would seem that as the property that 'a donor or vendor has on the day of the sale may be 'expressly bound by the warranty, so it may be tacitly 'bound, for a warranty is of no avail unless the warrantor 'has property whence he can make the warranty and the 'exchange.' Nay, the two writers (if two they were) use almost the same words:—

Bracton—quia non valet obligatio personae nisi habeat si opus fuerit unde possit excambium facere.

The Annotator—quia non valet warantia nisi habeat unde possit warantiam facere et escambium.

Now this piece of reasoning makes what must seem to us a very rash transition from 'This can be done by express bargain,' to 'This always is done by tacit bargain.' Both writers give it; both argue in the same way, in the same

[1] Case 748. The *Alicia de Warr* of Bracton's text should be *Alicia le Ailer*. The mistake is one easy to make.

phrase, that this must be so otherwise warranties will be of little worth. Further though there are a very few traces in later books of the rule that specific land might by express words be subjected to the burden of warranty, the much wider doctrine as to the tacit obligation, never became, so far as we know, part of the common law[1].

(6) Next we may note a coincidence which caught Vinogradoff's eye. Bracton[2] says that formerly the doweress had no power to bequeath the growing crop. The change in the law made by the Statute or Provisions of Merton he then states thus:—"sed noua superueniente gratia et proui-"sione......poterit uxor de fructibus et bladis......testari et "pro voluntate sua disponere." Against a case[3] decided under the old law the annotator has written thus:—"Modo "mutatum est de noua gracia quod potest testamentum "facere de blado firmo in terra." This coincidence in the use of the phrase *noua gracia*, which lies a little outside the lawyer's everyday stock of words, will seem the more striking when it is said that both Bracton and the annotator speak of the Provisions on other occasions without using this or any similar phrase. The Statute of Merton.

(7) On f. 26 b. Bracton speaks of a particular class of gifts, namely gifts made to the donee until (*quousque vel donec*) some other provision shall be made for him. He points out the distinctions which will arise according as the heirs of the donor, and again the heirs of the donee, are or are not mentioned. Four cases are possible (1) 'until I 'provide for you,' (2) 'until I or my heirs provide for you,' (3) 'until I provide for you or your heirs,' (4) 'until I or my 'heirs provide for you or your heirs.' He then passes on to speak about estates *pur autre vie*, gifts to the donee for the life of the donor, and then touches on gifts for terms of years. And here he has this phrase:—"Si autem fiat donatio ad Terminus terminans set indeterminatus.

[1] See Holmes, *Common Law*, p. 394 and the cases there cited, viz. Y. B. 20. Ed. i. 360; Y. B. 32 and 33. Ed. i. 516. See also Fitz. *Voucher*, 292 (28 Ed. i.) and Co. Lit. 102 b: "If a "man give lands in fee and bind "certaine lands specially to warranty, "the person of the feoffor is hereby "bound, and not the land, unlesse "he hath it at the time of the "voucher."

[2] Br. f. 96.

[3] Case 1409.

"terminum annorum, quamuis longissimum, qui excedit "vitas hominum, tamen ex hoc non habebit donatorius "liberum tenementum, cum terminus annorum certus sit et "determinatus, et terminus vitae incertus, et quia licet "nihil certius sit morte, nihil tamen incertius est hora "mortis." All the matter here described occurs in the space of a single page.

In the Note Book there is a case[1] which interested the annotator a great deal. It concerns Stephen Segrave. The fallen favourite was sued by the king for certain manors. The case seems to have been that King John had given these manors to David Earl of Huntingdon until (*quousque*) King John should make other provision for Earl David, and that Segrave derived such title as he had from Earl John heir of Earl David. Judgment, it seems from a note which the annotator himself has interpolated, was given for Segrave. The report is not so full as might be wished; but the annotator suggests that the case turned on this, that the king had never made another provision for Earl David himself and that nothing had been said about any provision being made for Earl David's heirs; "prouisio non tetigit "haeredes." He thinks with Bracton that if the clause be 'until I provide for you,' then after your death your heir will have a fee in the land not to be defeated by my tendering him other lands. Incidentally too he notices, as Bracton does, that *quousque* and *donec* are equivalent terms. But he adds another note which must be quoted in full—"Terminus "terminans set indeterminatus et incertus, et ideo liberum "tenementum sicut ad vitam hominis (a gift to you until I "otherwise provide for you, gives you the freehold, for though "a term is set to your estate, it is an uncertain term, such as "is set to the estate of every tenant for life), quia nichil "certius morte, nichil incertius hora mortis."

These are Bracton's very words, and the coincidence seems particularly remarkable, for Bracton introduces this phrase about the certainty of death the uncertainty of the hour of death, immediately after he has been discussing,

[1] Case 1124.

what the annotator thought was the point of Segrave's case, namely the effect of such words as 'until I otherwise provide 'for you.'

Year and day.

(8) The two books contain two very similar disquisitions as to the meaning of 'a year and a day[1].' Both writers maintain that the 'year' is always 365 days and 6 hours; that a leap year makes no difference; both argue against the contrary opinion; it is a mistake caused by the interpolation of an additional day in every fourth year; that day is interpolated to prevent the absurdity of keeping Christmas in the summer and the Nativity of the Baptist in the winter; no such absurdity would be caused by holding that the essoinee's 'year' is always the same; both compare the year of 365 days to a snake without a tail, the year of 365 days and 6 hours to a snake with its tail in its mouth; both think it necessary to preface their argument with some general considerations about the length of years, months, weeks, days, hours and moments. In short, it is not too much to say that the two disquisitions are substantially the same; both maintain by the same arguments, in the same phrases, a doctrine, which even if it ever was uncontroverted law, was abolished in 1256.

The dual seisin.

(9) In the Note Book the argument about leap year is immediately preceded by the discussion of a hypothetical case[2]. I will ask any reader who is familiar with Bracton's mode of thought and strain of language, and who is also familiar with the terminology of the rolls, whether this discussion is not extremely like Bracton's work. It concerns a matter which seems to have given him a great deal of trouble, namely the dual possession, or dual seisin, of freeholder and termor. For each of them has a legally protected possession or seisin, the one protected by the assize, the other by the *quare ejecit infra terminum*. How can one represent this in theory; how can one do so in the reasonable Roman terms that one finds in Azo's book? The discussion in the Note Book deals with a problem which

[1] Br. f. 359; Case 1291; see also Br. f. 344 b.

[2] Case 1290.

raises this question. The writer introduces the doctrine of two concurrent possessions

> quia simul *stare possunt* seisina proprietarii et firmarii, unius quantum ad liberum tenementum et alterius quantum ad usumfructum.

Bracton more than once states this theory

> quia bene sese compatiuntur de eadem re duae possessiones, dum tamen ex diuersis causis......quia ususfructus per se *stare potest* in persona unius, et liberum tenementum per se in persona alterius (f. 44 b.).
>
> quia sese compatiuntur terminus et feoffamentum de eadem terra, quia ibi sunt diuersa jura; ad feoffatum vero pertinet proprietas feodi et liberum tenementum, firmarius vero nihil sibi vendicare poterit nisi usum fructuum (f. 27).
>
> poterit enim quilibet illorum sine praeiudicio alterius in seisina esse eiusdem tenementi, unus ut de termino et alius ut de feodo et libero tenemento (f. 220 b.).

Further it will be observed that the writer of the passage in the Note Book uses the words *proprietarius* and *ususfructus*. Now it may, I believe, be denied with much confidence that these were terms of English law. I have copied near two thousand cases without having once had to write either of them. The tenant for years never has a *usufruct*, the freeholder never is a *proprietor*. Such terms belong not to the language in which lawyers plead, in which justices deliver judgment, they belong to the language of the rationalistic jurist who has come under romanesque influence, who will expound English law according to the best modern ideas. To say that no man but one could have written this passage, would be absurd enough; still we may say that of the only two passages in the Note Book in which there is anything that can be called a sustained argument, this one about the double seisin, states a theory which Bracton held in the terms which Bracton used, which were not the technical terms of English law, while the other is the dissertation on leap-year, the relation of which to a passage in Bracton's text is curiously intimate.

It will probably be allowed that these nine examples (which of course have been chosen as being the best) bring the work of the annotator very near to the work of Bracton. Still it might be rash to infer that the annotator and Bracton were one. They may have been two close friends, two members of the same school, perhaps pupil and master, interested in just the same problems of jurisprudence, solving such problems in the same way, in the same terms; they may have discussed together the bearing of Trussel's case on the charters of William Briwere, have talked over the binding of land by warranty, have heard Martin Pateshull expound the true theory of 'year and day,' have learned from each other or from their common preceptor the 'Juste 'propter jus sed iniuste propter iniuriam,' the 'Nihil certius 'morte, nihil incertius hora mortis;' the theory of the dual seisin, the terms 'proprietor' and 'usufruct' may have belonged to a school, a school of speculative lawyers who strove to reconcile English law with Rome and Reason. Less theoretic, more purely personal, links must be found between these two writers, before the connection will have become so close that we must acknowledge them to be not two, but one Bracton. **Summary.**

The Third Argument: The Cases 'noted up' in the margin of the Note Book.

We turn now to the most enigmatical class of notes, those namely which seem to be allusions to cases which are not in the Note Book. Often such notes consist of just a proper name and no more. All the notes of this class shall here be collected, and we will inquire whether there are any reasons for connecting Bracton with the cases, which have thus been 'noted up.' **The cases noted up.**

(1) Against an action for dower[1] we find this note:—

Ermeiard et herede de Hokesham.

Now on the 13th December 1255, as we may learn from **Ermengard and the heir of Huxham.**

[1] Case 1843.

an inquest post mortem[1], died William of Hockesham or Hoggesham, that is of Huxham near Exeter, leaving a son four years old. The wardship, however, of this child was worth nothing, because the father shortly before his death gave his land at Huxham to William "de Punchard," as the jurors call one whom we may easily identify with William of Punchardon. Punchardon lies in the parish of Kentisbere some ten miles as the crow flies from Huxham[2]. The reader may possibly remember that William of Punchardon married Ermengard widow of Thomas of Saunton, and with his wife brought an action for her dower against one Henry of Bratton[3]. That Bracton had dealings with Ermengard is established, that Ermengard had trouble with the heir of Huxham whose father had enfeoffed her husband, is very probable. This is how I would explain the note *Ermeiard et herede de Hokesham.* It is a note about a case affecting a lady whom the annotator knew so well that he did not give her a surname.

Apart from this very conclusive evidence, it may be shown that Bracton had cause to know something of both the families concerned in this case. A case concerning William of Punchardon, Henry Tracey and the heir of Roger Beaupel is cited without date in the printed treatise, and the MSS. prove that this citation was originally a marginal note[4]. William of Punchardon sat with Bracton as a justice of assize[5]. In 1257 Bracton was appointed to take an assize concerning land at Huxham, to which William of Punchardon was party[6]. Ermengard was convicted before Bracton of a disseisin perpetrated at Cheriton[7]. In 1262 Bracton was commissioned for an assize between Thomas Brother and Emma widow of William of Huxham touching common of

[1] *Calend. Geneal.* vol. 1, p. 73.

[2] See Lysons, Britannia, vol. 6, p. 85, where it is said that Robert de Hokesham conveyed the manor of West Buckland to Sir William Punchardon, whose heiress brought it to the Raleighs. The entry which enabled me to identify Hokesham or Hoggesham with Huxham is in Rot. Hund. vol. 1, p. 66, which showed that the Hokesham family held the hundred of Budleigh; see also ibid. p. 86, 91.

[3] See above p. 16.

[4] Br. f. 88 b. It is in the margin of OA and OB.

[5] Coram Rege Roll No. 96.

[6] Rot. Pat. 42 Hen. 3. m. 17 d. (MS. Ind.)

[7] Coram Rege Roll No. 90. m. 11 d.

pasture in Huxham[1]. In 1267 this same Emma paid a half-mark to have an assize before Bracton[2].

Corbyn's case.

(2) No cases seem to have interested the annotator more than those which concern the demurrer of the parol. Be it then explained, that very often when an action for land is brought against an infant, the action will remain in suspense until the infant is of age; in technical phrase the parol (*loquela*) demurs (*remanet*); or to use another term of art, the infant *habet etatem suam*, has or is allowed his age, that is, he need not answer until he has attained majority[3]. Such is the case if the infant has come to the land as the heir of an ancestor who died seised as of fee. But according to Bracton stress must be laid on these words *as of fee;* for if, e.g. the ancestor came to the land as guardian in chivalry, then his heir though under age will have to answer at once to the suit of the ward who is being kept out of his inheritance. Again the parol may demur because a person who has been vouched to warranty is under age. As may well be imagined many difficulties occur in working out this general principle, for lords are given to dealing in unauthorized modes with the lands which come to them by way of wardship; the lord, for example, who has A's land will enfeoff X, then X will die and his infant heir Y will enter, and when A sues Y, then Y will assert that the parol should demur. Or again the feoffee of the lord, or that feoffee's heir, will, when sued, vouch the lord's heir, who will be an infant.

Cases in the Note Book which raised such points as these are freely annotated, and it seems plain that the annotator thought that some of them were wrongly decided. Apparently his inclination was to confine the privilege of infant tenants and vouchees within as narrow bounds as possible. Now against several of these cases he writes the name *Corbyn*. The following are the instances in which this name occurs.

Case 30. Assize of mort d'ancestor brought by Simon on

[1] Rot. Pat. 46. Hen. 3. m. 5 d. (MS. Ind.)

[2] Excerpt. Rot. Fin. vol. 2. p. 458.

[3] The demurrer of the parol for nonage was abolished in 1830 by 11 Geo. 4 and 1 Will. 4, cap. 47, sec. 10.

the death of his mother Swanill against Margaret and Jacob. Margaret as doweress vouches Jacob who is an infant. Simon asserts that Swanill held of Jacob's father who on Swanill's death entered by intrusion ("by intrusion," says the annotator "for the tenement was held in socage"). *Held* that the assize should proceed. Against this case stands the name *Corbyn.*

Case 1722. Assize of mort d'ancestor brought by Richard Montacute on the death of his father William Montacute against Gilbert of Say, who vouches his own wife, who vouches Matthew of Clevedon, who vouches the infant heir of Drogo Montacute. Matthew claims under the deed of Drogo's father. Richard however alleges that Drogo's father obtained possession of the land in the character of lord and guardian on the death of William Montacute, Richard's father. *Held* that the assize must proceed without waiting for the majority of Matthew's vouchee. Against this the note is, *Corbin de Ricardo de Monte Acuto.*

Case 1827. Assize of mort d'ancestor brought by Eudo Fitz Walter on the death of his father against Randolph Braham who vouches Roger son of Earl Hugh the Bigod; Roger is an infant. Eudo alleges that his father Walter died seised in fee, and that under an agreement with William of Toftes who was Eudo's guardian, Earl Hugh intruded and kept the land. Randolph denies that Walter died seised in fee. *Held* that the assize must proceed. Against this case stands the note, *Nota pro Corbyn quod etas non expectatur.* Also the annotator has added this note—'To the same effect 'you have a case in the Suffolk Eyre of Martin Pateshull, 'A.R. 12. Ass. mort. antec. *If Roger of Gloucester.* There 'the age is not awaited of the heir of a chief lord, who made 'a feoffment while the very heir [of his tenant] was within 'age, but the assize was taken, saving to the feoffee the right 'to recover in exchange when the [lord's] heir should have 'attained full age. And the same ought of rights (*de jure*) to 'be observed when an alienation is made after a writ has 'been purchased by the very heir whether the very heir be 'under age or no.' These last words, it will be remarked,

introduce a somewhat different topic, namely the effect of alienation pendente lite.

Case 1898. On the margin of a later page the case of Roger of Gloucester is copied from the Suffolk Eyre Roll. Assize of mort d'ancestor brought by John son of Roger of Gloucester against Richard Paide, who vouches William infant son of William de Ros. John alleges that Roger died seised and William de Ros the elder entered as guardian. No reply is made and the action is compromised. It would seem therefore that the annotator was mistaken when he said (in commenting on the case of Eudo Fitz Walter) that the assize was taken. This case is prefaced by the words, *Corbyn. De warrantia ipsius qui est infra etatem.*

We have then four allusions to 'Corbyn' and the context into which this mysterious word is introduced is always much the same. We turn to the places in which Bracton discusses the demurrer of the parol.

On f. 275 he cites the cases of Eudo Fitz Walter and Roger of Gloucester, and, like the annotator, treats the latter as an authority against the demurrer of the parol. But also on f. 269 b, he gives Eudo's case at length in such a context as to show that in his mind, as in the annotator's, the rule that the parol does not demur for the nonage of a vouchee whose ancestor entered merely as guardian, was closely connected with the rule about alienation pendente lite, the rule *qui dolo desiit possidere pro possessore habebitur.* Now in the Digby MS. the whole of this passage (twenty-four lines of the printed book[1]) is in the margin, and has above it the words *Casus Corbin.* It would seem therefore that in Bracton's mind, as in the annotator's, this topic was connected with Corbyn's Case.

On the 10th of April 1260, Bracton was appointed to take an assize of mort d'ancestor between Richard Corbyn and Adam le Bel for land in the township of Montacute in the county of Somerset[2], on the 3rd of June in the same year to

[1] The passage begins on f. 269 b., line 24, with '*Et ideo cum per talem*' and ends on f. 270, line 2, with '*Rogerum de warantia.*'

[2] Rot. Pat. 44 Hen. 3, m. 12 d. (MS. Ind.)

take a similar assize for land in the same township between Richard Corbyn and Ralph le Bel[1]. Is not this the explanation of the four notes in the Note Book and of the note in the Digby MS.? I had hoped to make the answer more certain by finding Corbyn's case on a plea roll; in this I have failed; but it will not escape remark that all the cases in connection with which we have found Corbyn's name are assizes of mort d'ancestor[2].

Whitchurch. (3) Against a case[3] from 1219 we find *Nota Whitcherche.* The name which assumes the various forms of *de Albo Monasterio, Blancmoustier, Blanchminster, Whitminster* and *Whitchurch*, was not uncommon in the thirteenth century: but in that century a family of 'Blanchminster or De Albo Monasterio in some records called Whitminster' was seated in the parish of Stratton in Cornwall[4], near the Bristol Channel and near the boundary of Devon. In 1261 Bracton was appointed to take an assize between Rannulf de Albo Monasterio and the Prior of Launceston for the church of Stratton[5]; from the next year we have a fine whereby Rannulf recognized the Prior's right to the church[6].

Ralph of Arundell. (4) The Note Book has a case[7] in which a lord claims wardship of the heir of a female tenant against the infant's father. The father pleads that he is tenant by the curtesy and that therefore no wardship is due. On this plea a day is given for judgment. Against this case stands a note:—

Casus Radulphi de Arundelle similis isti in Cornubia.

That the allusion is to a Cornish case needs no proof. A Ralph Arundell, who is regarded as the founder of the great Cornish house Arundell of Lanherne, was sheriff of Cornwall

[1] Ibid. m. 10 d.

[2] This same Richard Corbyn, or perhaps it was another, seems about this time to hold a good deal of land in Devonshire, the manors of Lampford, Uppacot, Parkham and Belstone, Feet of Fines, Devon, No. 613. A.R. 54 (MS. Ind.) In 1253 Bracton heard an assize for common of pasture at Litlemore in Somerset in which one Walter Corbyn was plaintiff. Coram Rege Roll, No 90, m. 16.

[3] Case 25.

[4] Lysons, vol. 3, p. cxxiii.

[5] Rot. Pat. 45 Hen. 3, m. 9 d.

[6] Feet of Fines, Cornwall, 46 Hen. 3, No. 7. In 1259 Rannulf and his wife were parties to another fine. Cornwall, 43 Hen. 3, No. 1.

[7] Case 266.

in 1260[1]. He held the manor of Trembleth in St Ervan and in 1259 and 1262 was party to real or simulated litigation ending in fines[2]. Moreover in 1254 and 1257 three different assizes in which he was engaged, all touching tenements in Cornwall, were brought before Bracton[3].

We turn to that Bodleian treasure, the Digby MS. At the bottom of one of its pages we find without context the note *Memorandum de casu R. de Arundelle.* On this page there is nothing that we can connect with the case in the Note Book; but on the page next before it there occurs a statement that tenant by the curtesy is seised of the freehold, and so can bring an assize, though he is not seised as of fee: possibly then the note in the Digby MS. has wandered a little way from its proper place[4]. It seems the general opinion of Cornish antiquaries that Ralph Arundell owed his estates in Cornwall to his having married an heiress, the heiress of Trembleth. At any rate here again we find a link between the Digby MS. and the Note Book.

But further, at the very bottom of the first leaf of each of the five first quires of the Digby MS. may be seen the words *Dominus Radulphus* (in some cases *Randulphus*) *de Ardell'.* Then at the end of a later quire[5] there stands a more eloquent legend, which I read thus:—

Mittuntur J. de bello prato septem peciae et dimidia subsequentes rubricam istam viz. quod non est capienda conuictio super conuictionem, et de illis tenetur respondere domino (a blurred word which may I think be *Rad'*) *de Arundell'.*

The meaning of this seems plainly to be that the seven and a half quires following the rubric *Quod non est capienda etc.*[6], are lent to J. de Beaupré, (probably in order that he may have them copied,) and that he is bound to answer for them to Sir Arundell. We may infer then that this very MS. belonged to a Sir Ralph Arundell. Beaupré

[1] Lysons, vol. 3, p. cxix.

[2] Feet of Fines, Cornwall, 44 Hen. 3, No. 2; 46 Hen. 3, No. 5.

[3] Coram Rege Roll, No. 96, m. 1; Rot. Pat. 41 Hen. 3, m. 7 d., 42 Hen. 3, m. 2 d. (MS. Ind.)

[4] MS. Digby, 222, f. 98. This folio begins at *talis* in the last line of f. 206 b. of the printed book, and ends with *liberum* in the first line of f. 208.

[5] f. 129 b.

[6] Br. f. 295 b.

again was a good Cornish name. In the fourteenth century Arundells and Beauprés marry into the same family, their souls are prayed for in the same church[1]. What here concerns us is the connection between the Note Book and this MS. of the treatise; still it is interesting to guess that the latter, a MS. which gives us the treatise in what seems an exceptionally pure form, may be traced to the house of a man who was sheriff of Cornwall when Bracton took the Cornish assizes; but this trail must be followed by others.

Gorges. (5) There is an appeal of mayhem[2]; the appellee did not appear and the sheriff returned that he was not to be found; thereupon the sheriff was directed to exact him in three county courts and inform the justices of the result. Against this is written

Casus ipsius qui desponsauerat uxorem Radulfi de Gorges antequam dictus Radulfus.

This I believe refers to a case found elsewhere in the Note Book[3]. One Thomas of Bayeux carried off the king's ward Ellen daughter of Ivo of Morville and married her: the king had intended to give her to Ralph Gorges; steps seem to have been taken to outlaw Thomas and his accomplices (this is the point that the annotator takes;) when Thomas appeared it was adjudged that Ellen being an infant was not bound by the marriage; they were separated and she afterwards married Ralph[4]. This allusion therefore seems sufficiently explained by the Note Book itself; but it may be added that the family of Gorges gave its name to the manor of Braunton Gorges which lies in the same parish as that manor of Saunton which was once in the hands of Henry of Bratton, also that in 1258 and 1262 Bracton was appointed to hear assizes in which Ralph Gorges was concerned[5].

Cole's case. (6) Cole was, as it is, a common name, therefore when we find against a case *fere casus Cole*[6] we learn little.

[1] See Maclean, *History of Trigg Minor*, vol. 1, p. 189, vol. 2, p. 158, and the index of that valuable book.
[2] Case 346.
[3] Cases 1263, 1267.
[4] Excerpta e Rot. Fin. vol. 2, p. 577.
[5] Rot. Pat. 42 Hen. 3, m. 15 d; 46 Hen. 3, m. 16 d. (MS. Ind.)
[6] Case 269.

However in 1238 a Richard Cole held land in Cornwall. A fine is preserved which was levied between him and the Prior of Launceston touching the church of St Juliotts; another levied between him and William atte Hasse[1]. In 1254 or thereabouts a Richard Cole was charged before Bracton with a disseisin done at Kadekeber' (Cadbury?) in Devonshire[2]; on another occasion a Richard Cole of Sebrittescot' comes before Bracton as a juror along with a Raleigh, a Tracey and others[3]. In 1262 one of the assizes which Bracton was commissioned to hear was brought against Martin Cole for land at Coombe in Devonshire[4].

(7) *Casus de Cornw*[5]. A family which bore the name De Cornu was seated at Horwood a few miles east of Bideford[6]. Ralph de Cornu was sheriff of Devon in 1250[7]. In the same year Roger Le Cornu and Fina his wife paid a mark for an assize before Henry of Bratton[8]. Cornu.

(8) Against a case[9] illustrating the rules of descent, we have *Nota Wynescot.* There is a place called Winscot in the parish of St Giles in the Wood near Torrington, which gave its name to a family of landowners[10]. A Johannes de Wynescote appears several times on Bracton's two Assize Rolls, once as engaged in litigation touching common at Morchard Bishop[11]; a Walterus de Wynescote is also mentioned[12]; but the case to which allusion is made in the Note Book has not been found. Winscot.

(9) Against a case[13] deciding that an infant is not bound by his fine, we have *Nota casum Hug' fil' Wymundi de Ralegha primogenitum et postnatum qui fuit infra etatem de concordia inter eos facta coram H. de Brattona.* There is no need here to prove that Bracton was concerned with the case to which reference is thus made. There is extant the foot of Raleigh.

[1] Feet of Fines, Cornwall, 22 Hen. 3, No. 3 and 7.
[2] Coram Rege Roll, No. 96, m. 8.
[3] Coram Rege Roll, No. 90, m. 5 d.
[4] Rot. Pat. 46 Hen. 3, m. 12 d. (MS. Ind.)
[5] Case 1904.
[6] Polwhele, *Devonshire*, vol. 2, p. 409 note.
[7] Risdon, *Devonshire*, vol. 1, p. 117.
[8] Excerpt. Rot. Fin. vol. 2, p. 83.
[9] Case 833.
[10] Lysons, vol. 6, p. 246.
[11] Coram Rege Roll, No. 96, m. 1 d, 6, 10 d, 13 d.
[12] Coram Rege Roll, No. 90, m. 10 d.
[13] Case 1884.

a fine[1] levied in A.R. 40, before the justices in eyre at Exeter between Wymund of Raleigh and Warin of Raleigh, whereby, (this early specimen of elaborate conveyancing is worth notice) Wymund recognizes land at Bolleham to be the right of Warin, to hold of Wymund and his heirs to Warin and the heirs of his body, and after his death if he die without issue, to Wymund younger brother of Warin and the heirs of his body, and after his death if he die without issue, to Reginald brother of Wymund and the heirs of his body, and after his death if he die without issue, to Richard brother of Reginald and the heirs of his body, and if Warin, Wymund, Reginald and Richard die without issue, then the land is to revert to Wymund of Raleigh and his heirs. In 1259 Bracton was commissioned to take an assize of mort d'ancestor between Hugh and Warin of Raleigh for land at Belham[2]. This may well be the case to which the annotator refers. Again in 1265 Warin of Raleigh and Hawisia his wife pay a half-mark for an assize before Bracton[3]. That Bracton himself held land of a Raleigh has been shown above[4].

(10) *Nota de villanis Henrici de Tracy de Tawystocke qui nunquam fuerunt in manu Domini Regis nec antecessorum suorum et loquebantur de tempore Regis Eadwardi coram W. de Wiltona*[5]. This must allude to a case from Bracton's time: William of Wilton was just his contemporary; Tavistock, it were needless to say, is in Devon; Henry of Tracey sat as justice of assize along with Bracton, and was often appointed to deliver the gaol at Exeter. In 1279, as appears from a case in the Placitorum Abbreviatio[6] the men of Tavistock were again disputing with their lord as to whether they were entitled to the protection given to tenants of the ancient demesne. Two records, as it seems, were produced against them, the earlier of which was a case before Bruce and Middleton justices of assize in the 47th year of King Henry (1262-3). I should suppose that the case before

[1] Feet of Fines, Devon, Hen. 3, No. 492.
[2] Rot. Pat. 43 Hen. 3, m. 13 d. (MS. Index.)
[3] Excerpt. Rot. Fin. vol. 2, p. 423.
[4] See above p. 16.
[5] Case 1237.
[6] Plac. Abbrev. p. 270.

Wilton was yet earlier than this; much later it cannot have been, for Wilton was killed at Lewes on 14th May, 1264.

Even in imagination it is pleasant to walk in Devon. We take the train to Barnstaple; Bracton was archdeacon of Barnstaple. The next morning we may stroll easily to Raleigh, the cradle of the great house, and so on through Heanton Punchardon and Braunton Gorges to Saunton the manor which Bracton held: we have left Bratton Fleming some six miles to our right. Crossing the Braunton Burrows, we may be ferried over the estuary of the Taw and Torridge to Appledore; and so to Bideford; there will yet be time to visit Horwood where the Cornus lived. If we would see Winscot we must go south to Torrington, and then a third day's walk will take us over the Cornish border to Stratton, the home of Blanchminsters or Whitchurches: the church there claims our notice; Rannulf Blanchminster and the Prior of Launceston fell out about it and Bracton heard the cause. Then our way will lie in pleasant places; one day along the shore to St Juliott's, pretending if we can that we are interested in the Prior of Launceston, for this church also he acquired from one Richard Cole. We are not far now from the home of Ralph Arundell. But let us cross the Bodmin moors; on their south-eastern verge near the Cheese Wring we find Tuckenbury, and we remember how the Raleighs gave Bracton the manor of Tykenbrede for his life. On to Tavistock, where the villeins of Henry Tracey quarrelled with their lord and relied in vain on Doomsday Book. Richard Corbyn's manor of Belstone we can reach next day; the way lies straight across Dartmoor; it is a wild way, but (teste meipso) there is none pleasanter in England. Of course we can go round by the high-road, and a detour, none too long, will take us through Broadwood Wiger and Bratton Clovelly. To Exeter will be no long walk from Belstone; we must enter the cathedral, seek the spot where they laid the body of Henry Bratton, where they prayed for his soul and the soul of John Wiger. At his tomb our pilgrimage might end; but if one day more can be spared, we will go through Huxham and Thorverton, find Punchardon in

Geography of the cases.

the parish of Kentisbere and catch the train at Tiverton. Montacute we might visit on our way back through Somersetshire, if we cared to see the scene of the 'Casus Corbyn'. Not far out of our track have lain Ash Reigney, Buckland Brewer, Bovey Tracey, Newton Tracey, Nymet Tracey, Colaton Raleigh, Combe Raleigh, Withycombe Rawleigh. Many questions are solved by walking; *Beati omnes qui ambulant.*

Summary. These ten cases 'noted up' in the margin of the Note Book seem to supply a link of just the kind that was wanted. Our two writers not only select the same rolls, rolls of Pateshull and Raleigh, ponder over the same cases, hold the same juristic theories, use the same unusual phrases, but also are interested in the same counties, in the same set of people, Arundells, Punchardons, Traceys, Raleighs; they have personal as well as professional interests in common. If more be needed to make them one, perhaps it is that both should have been guilty of the same astonishing blunder.

The fifth Argument. The Baronial Nolumus.

Special Bastardy. The last point which can be discussed is of some curiosity, for it concerns the legitimation of bastards and that famous baronial *Nolumus* of which all have heard; but we must proceed cautiously and patiently, for we have to deal with an intricate question. The reader may be asked to keep two dates steadily before his mind, the 12th of October 1234, and the 23rd of January 1236.

The Statute of Merton. (1) The Statute of Merton as printed by the Record Commissioners[1] professes to have been made on the 23rd Jan. 1236, the morrow of S. Vincent in A.R. 20. It contains eleven chapters the subject matters whereof are as follows:—

cap. 1. Damages in actions for dower.
2. Widows may bequeath the crop on their dower lands.
3. Procedure and punishment in case of redisseisin.

[1] *Statutes of the Realm*, vol. 1, p. 1.

4. Approvement of common
5. Usury shall not run against infant heirs.
6. and 7. Ravishment of ward; valor maritagii.
8. Periods of limitation for divers writs.
9. Special bastardy.
10. Suit of Court by attorney.
11. Imprisonment of those who trespass in parks.

How much of it made at Merton?

(2) There is no doubt that a parliament was held at Merton on the day just mentioned and that it enacted laws. On the other hand the evidence for the full form of the statute printed by the Record Commissioners is not first rate. This full form has not been found on any extant roll. Whether there was at this time or for many years afterwards a Statute Roll, is very doubtful. Legislative acts are often found on the Patent, Close, and Coram Rege Rolls. Thus the Provisions of Westminster are on the Close Roll; the ordinance touching leap year is on the Close Roll; instances of legislative acts found on Coram Rege Rolls will be given hereafter. The best evidence for the full form of the Statute is a comparatively modern MS. which professes to be a copy of a Statute Roll not now forthcoming; but substantially the same form is found in other old private MSS.

Only part made at Merton.

(3) The evidence against this full form is briefly this:—

(*a*) Writs directed to the sheriffs announcing the laws made at the Parliament of Merton are enrolled on the Close Roll under date 30th Jan. 1236[1]. They mention chapters 1, 2, 3, 4, 5, but not the other chapters.

(*b*) Matthew Paris under the year 1236 gives chapters 1, 2, 3, 4, 5 and 11, but not the other chapters[2].

(*c*) The excellent Annals of Burton give as the laws made at Merton on the 23rd Jan. 1236, chapters 1, 2, 3, 4, 5 and 11, but not the other chapters[3]. Since chapter 11 does but report an abortive discussion about the right to imprison those found trespassing in parks, and declare that

[1] *Statutes of the Realm*, vol. 1, p. 4, from Rot. Cl. 20 Hen. 3, m. 18 d.

[2] Mat. Par. vol. 3, p. 341.

[3] Ann. Mon. vol. 1, p. 249.

for the present there is to be no change in the law, the omission of this in the writ to the sheriffs is explicable.

(*d*) Almost certainly chapter 8 changing the periods of limitation was not enacted at Merton. It is not mentioned in the writ of 30th Jan. 1236. On the other hand a writ announcing this change to the people of Ireland is enrolled on the Patent Roll under date 20th March, 1237[1]. Also the Annals of Burton give it as having been made on 5th Feb. 1237[2]. Lastly our Note Book gives it among extracts from the Coram Rege Roll of A.R. 21 (A.D. 1237-8), which roll is not now forthcoming, and describes it as having been made at a general council held at Westminster in that year[3].

The story of the Nolumus. (4) The chapter (cap. 9) then with which we are concerned, the celebrated chapter about the legitimation of bastards, stands in suspicious company so far as regards its date. But let us note the substance of it:—the bishops said that they would not answer the inquiry whether a person was born before or after the marriage of his parents, for this would be against the common order (*contra communem formam*) of the church; they then in their turn asked the barons to consent that children born before marriage should inherit; this request the barons met with the *Nolumus*. The discussion therefore was sterile; no law was made; therefore there was nothing to be published to and by the sheriffs; therefore the silence of the Close Roll, of Paris, of the Burton Annalist is not unnatural. For the sake of brevity I shall speak of the transaction described in this chapter as 'the Nolumus.'

The Ordinance of 1234. (5) It is an indubitable fact that about bastardy there had been legislation some fifteen months before the parliament of Merton. This is proved by the Coram Rege Roll for A.R. 18-19, a roll still extant and extremely well dated. Under the heading *Die Jovis proxima post festum S. Dionisii anno Regis Hen. fil. Reg. J. xviij*, (St Denis is Oct. 9, a Monday in 1234, so this date is 12 Oct., 1234,) stands a provision made by the king, Archbishop Edmund, ten named

[1] *Statutes of the Realm*, vol. 1, p. 4, from Rot. Pat. 21 Hen. 3, m. 10.

[2] p. 252.

[3] Case 1217.

bishops, eleven named earls, and many barons named and unnamed. It is to this effect—When in the king's court it is objected to any that he is a bastard because born before the marriage of his parents, the plea is to be sent to the bishop to inquire whether he was born before marriage, or no. This in substance is all that is said; the terms in which the bishop must make his return to the writ are not expressly prescribed; there follows a provision against appeals, and a clause making the rule applicable to suits already pending as well as to suits not yet begun. I shall refer to this as 'the ordinance of 1234'.

Relation of the Nolumus to the Ordinance.

(6) Supposing for a moment that the date of the *Nolumus* is uncertain, what we may ask is its relation to the ordinance of 1234? Now had we nothing but internal evidence to guide us, we might for a moment be inclined to regard the ordinance as a settlement of the dispute disclosed by the story about the *Nolumus*; the bishops gave way and consented to return a direct answer to the king's writ. But this doctrine would leave inexplicable the later practice of the king's courts, which did not send the issue of special bastardy to the ordinary; it could hardly be squared with certain letters which Robert Grosseteste bishop of Lincoln wrote to William Raleigh; it is flatly contradicted by an unquestionable authority. A few months after the Parliament at Merton an entry dated 9th May, 1236, was made on the Close Roll. This entry has been printed by Blackstone[1]. It consists of a writ addressed to the Archbishop of Dublin and the Justiciar of Ireland. They have asked how to proceed in case of special bastardy. They are told that there was a question as to where such an issue should be decided; that in the year past (*anno preterito*) it had been ordained that the issue should be sent to the Court Christian; that afterwards however (*postea vero processu temporis*) the bishops finding that they were required to state specifically whether the person was born before or after marriage, (and not generally whether he was legitimate or no,) had protested that they could not do this; that consequently the issue was

[1] *The Great Charter*, Introduction, p. lvii., from Rot. Cl. 20 Hen. 3, m. 13 d.

for the future to be tried in the king's Court; but that whether it was to be tried by jury or by other proof was not yet determined. This seems to settle decisively the sequence of events. The ordinance of 1234 said that the question was to be sent to the ordinary; the bishops perhaps had hoped that they would be allowed to say merely 'This man is legitimate'; the king's Court would not be put off by this, would press the question 'Born in wedlock or no?'; then (almost certainly at the Merton Parliament) the bishops made an attempt to get the law altered; in this they failed; still they succeeded in establishing their refusal to answer the obnoxious question.

Grosseteste's letter.

All this agrees with the later practice and with Grosseteste's letters to Raleigh and to Archbishop Edmund. In one of his letters to the Archbishop there is a passage to the following effect:—'The king and his council are attempting 'to compel me to answer the question, whether a person was 'born before the marriage of his parents or no; I have 'refused to do this and have been cited before the council. 'Also the king and his council say that you along with the 'bishops, earls and barons of England, have consented to this 'form of question and answer. I beg of you to tell me 'whether you did so consent. If you did, then what am I to 'do? If I answer the question, I fear to fall into the hands 'of the living God; if on the other hand I refuse to answer 'and you have consented to the form in which the question 'is put, I shall hardly escape from falling into the hands 'of men.' This letter was written after Grosseteste had been consecrated bishop of Lincoln, that is, after the 3rd of June, 1235; Dr Luard has assigned it to the year 1236 but it can not well have been written after the *Nolumus*. From it we may gather that the question had lately been debated and that, according to the contention of the royal judges, the bishops had then consented to answer the king's writ word for word, but that whether, in their own opinion, they had really consented to this, was not very clear, was at all events not well known to the newly consecrated bishop of Lincoln[1].

[1] See Grosseteste's *Letters*, (ed. Luard), pp. xxxvii. ciii. civ. 76—97, 104.

(7) Hitherto we have left Bracton out of account; when we turn to him our real difficulties begin. What he does is this:—In the first place he tells the story of the *Nolumus.* His version is an expanded version of that which is in the Statute Book. He agrees with the Statute Book as to place and date. The debate took place at Merton on the morrow of S. Vincent in A.R. 20, that is 23rd Jan. 1236. So far all is well; but he immediately proceeds to say that *afterwards* on the Thursday next after S. Denis *in the same year* a provision was made by the king, archbishop, bishops, earls and barons. This provision we find to be an expanded version of the ordinance of 12th Oct. 1234. The day is rightly described as the Thursday next after S. Denis: but the year is wrong, wrong by two years. There can be no doubt that it is the ordinance of 1234 to which he refers; he gives a long list of the prelates and magnates who assisted at its making; this agrees with the list on the Coram Rege Roll; and though Bracton has handled his text very freely, still it is plain beyond doubt that the provision the substance of which he professes to give, is the ordinance of 1234.

Bracton inverts the dates.

(8) Clearly then as Selden pointed out there is a blunder in Bracton's text[1]. The suggestion is ready to hand that this is a blunder of copyists or editors, and, though I have looked at many MSS. for a variant and none has appeared, one would be very willing to make a small conjectural emendation if this would mend the matter. But no little change would suffice, nothing short of the rewriting of a chapter. The text distinctly represents the ordinance as a settlement of the debate which had provoked the *Nolumus.* To make this the clearer the words of the ordinance have been tampered with, (as I shall show hereafter), so as to represent the bishops as definitely and expressly consenting to answer the question, 'Born before marriage or no?' Then, says Bracton's text, by reason of this common consent it is in the king's election whether to address this inquiry to the ordinary or to determine it in his own court. According to the authentic text of the ordinance the bishops did not

The mistake is Bracton's.

[1] Selden, *Titles of Honour*, Part. 2, chap. 5, § 23.

consent definitely and expressly to answer word by word an inquiry so framed. Bracton's text is wrong and seemingly no small verbal change will set it right.

One other fact will however suggest that his memory (or his note book) had served him some trick about the proceedings of the parliament at Merton. One of the changes in the law made then and there was the change which enabled a dowager to bequeath the growing crop; this clause of the Statute is beyond suspicion. Bracton alludes to it but cites the Coram Rege Roll for A.R. 18—*sicut patet de prouisionibus apud Merton inter placita quae sequuntur Regem Henricum anno regni sui decimo octauo*[1]. At times, then, he may have thought that the Merton Parliament took place in Jan. 1234, and therefore before the making of the ordinance about special bastardy.

The Note Book inverts the dates.

(9) Having seen what Bracton did, let us now see how the maker of our Note Book dealt with this same matter. He had the Coram Rege Roll for A.R. 18—19 in his hands. His marks may be seen upon it at this moment. He extracted many cases from it. We have in the Note Book a legislative provision touching the assize of darrein presentment which is taken from the front of one of its membranes. On the back of that membrane stands the ordinance of 12th Oct. 1234. This also is copied into the Note Book though in an expanded form. But before this stands the story of the *Nolumus* in almost precisely the expanded form in which Bracton gives it. For this the roll whence extracts are being made gives no warrant whatever. In the Note Book no date is assigned to the story, but the transaction is described as having taken place at Merton. Then the ordinance is introduced with *Postea vero alio die*. The maker of the Note Book therefore believed as Bracton believed that the ordinance came after the *Nolumus*; he ascribed both to 1234; Bracton ascribes both to 1236. This matter of bastardy finished, we have then in the Note Book

[1] Br. f. 96. I have not found the right date A.R. 20 in any single MS., and I have examined eleven; some give 15, some 18, some '15 alias 18'.

more extracts from the same roll; the cases which are scored on the roll are duly copied.

Conjectural account of the mistake.

(10) Let us now suppose that Bracton and the maker of the Note Book were but one person. That person believed, for some reason or another, that the famous discussion between bishops and barons took place before the publication of the ordinance. When his clerk under his eye was copying from the roll of 1234 and had come to the entry about bastardy, then to make matters clearer, he from some other source furnished that clerk with an account of the *Nolumus*. This was inserted to explain the ordinance which was then to be copied, and which was copied though not (as we shall see) without interpolations. At a later time this same person was using the materials that he had collected, was writing a treatise on the laws of England; his own Note Book puzzled him; he remembered that the parliament of Merton, at which the barons said *Nolumus*, was held on 23rd Jan. A.R. 20; how then could the subsequent ordinance have been made in A.R. 18? There was nothing for it but to change the latter date and to give the ordinance to A.R. 20. Unfortunately however A.R. 18 was the right date.

This of course is conjecture, the conjectural history of a muddle; the man who antedated the parliament of Merton, had afterwards to postdate the ordinance. He was persuaded erroneously, that the ordinance came after the fruitless debate at Merton; this being so, he could not get the dates straight though he tried first one expedient and then another.

The documents tampered with.

(11) But the matter does not rest here. I have said that Bracton gives an expanded form of the ordinance and an expanded form of the story told in the Statute Book about the *Nolumus*. So does the Note Book, and in each case the version in the Note Book seems intermediate between Bracton's version and the original text. This may best be manifested by printing in each case the three versions in such a manner that comparison may be easy.

Here then are the three versions of the ordinance; (A) the genuine text of the Coram Rege Roll, (B) the text in the Note Book, (C) Bracton's text.

A Provisum fuit et concessum quod de caetero cum talis bastardia
B Provisum fuit et concessum quod de caetero cum talis bastardia
C Provisum fuit et concessum quod de caetero cum bastardia

A objiciatur alicui in curia domini Regis quod
B objecta fuerit alicui in curia domini Regis quod
C objecta fuerit alicui de tali causa in curia domini Regis quod

A natus fuit ante
B bastardus sit et ideo bastardus quia natus ante sponsalia sive
C bastardus sit et ideo bastardus quia natus ante sponsalia vel

A matrimonium contractum inter patrem suum et matrem suam mittatur
B matrimonium contractum inter patrem suum et matrem suam mittatur
C matrimonium contractum inter patrem suum et matrem suam mittatur

A loquela ad episcopum loci ad inquirendum utrum
B loquela ad episcopum loci ut inquiratur per haec verba utrum
C loquela ad ordinarium loci et fiat inquisitio per haec verba utrum

A talis natus fuit ante predictum matrimonium vel
B talis natus fuerit ante sponsalia vel matrimonium vel
C videlicet talis natus fuerit ante sponsalia sive matrimonium vel

A post ita
B post ita
C post et rescribat ordinarius per eadem verba domino Regi sine aliqua cavellatione. Et

A quod in inquisitione illa cesset omnis appellatio sicut in
B quod in inquisitione illa cesset omnis appellatio sicut in
C in illa inquisitione facienda cesset omnis appellatio sicut in

A simplici bastardia de qua placitum
B omni alia inquisitione de bastardia de qua inquisitio
C omni alia inquisitione de bastardia de qua inquisitio demandanda

A transmissum erit ad curiam cristianitatis
B fuerit transmissa ad curiam cristianitatis episcopo vel ordinario
C fuerit alicui ordinario

A ita quod nulla appellatio inde fiat extra regnum.
B facienda et ita maxime quod nulla fiat appellatio extra regnum
C facienda et maxime quod nulla fiat appellatio extra regnum

A Et ideo
B si de necessitate contingat appellari. Et ideo tunc preceptum fuit quod
C si de necessitate contingat appellari. Et tunc preceptum fuit quod

A decaetero ita teneatur tam de illis de quibus
B ita teneretur et observaretur in futuro tam de illis de quibus
C ita teneretur et observetur in futuro tam de illis quam de quibus

A judicium est faciendum in curia domini Regis quam de
B judicium ex tunc faciendum esset in curia domini Regis tam de
C judicium ex tunc faciendum esset in curia domini Regis tam de

A placitis quae nondum incipiuntur cum talis bastardia
B placitis inceptis quam incipiendis cum hujusmodi bastardia
C placitis inceptis quam incipiendis cum hujusmodi bastardia

A objiciatur.
B objiciatur.
C objiciatur ex tali causa.

It seems to me fairly evident that the second of these versions marks a stage in the process whereby the third was evolved from the first; it agrees now with the one and now with the other. It agrees, for example, with the third in giving some important words about appeals from the ordinary which are not in the original document, introducing *maxime* and *si de necessitate contingat appellari*. It agrees again with the third as to the last clause, and the form in which they give it is not very intelligible. On the other hand it agrees with the first and not with the third in wanting the very material words which bind the ordinary to answer precisely the question 'Born before wedlock or no?' This is a serious interpolation. Did the bishops in 1234 distinctly bind themselves to answer this question? Their conduct in 1236 and Grosseteste's letters make it improbable that they did so. It seems much more likely that they did not fully understand what would be expected of them, that when they were pressed to answer the precise terms of the writ they refused and successfully maintained their refusal. One can not help for a moment charging Bracton with dishonesty in having tampered with the text of an important document; but the manner in which he inverts the dates of the two transactions shows, as it seems to me, that he had gone utterly wrong about this piece of history. Such a mistake made by a royal judge about events but twenty years old, may be very wonderful; but the mistake is there.

And now let us compare the three versions of the story about the *Nolumus*, (A) that printed in the Statute Book, (B) that given by the Note Book, (C) Bracton's.

A Ad breue Regis de bastardia
utrum aliquis natus
B inter alia tractatum fuit de obiectione bastardiae
utrum videlicet aliquis natus
C inter alia tractatum fuit de huiusmodi obiectione bastardiae
utrum videlicet quis natus

A ante matrimonium habere poterit
hereditatem
B ante matrimonium succedere possit antecessoribus suis in
hereditate et haberi pro
C ante sponsalia et matrimonium
haberi possit pro

A sicut ille qui natus est post,
B legitimo sicut illè qui post matrimonium natus fuit. Et ad [hoc]
Archiepiscopi et
C legitimo sicut ille qui post matrimonium natus fuit. Ad quod

A responderunt omnes Episcopi
B omnes Episcopi responderunt quod cum illi qui nati
sunt ante
C omnes Episcopi responderunt quod omnes illi qui nati
fuerunt ante sponsalia vel

A
B matrimonium ita legitimi sunt sicut illi qui post
matrimonium nati sunt, quoad
C matrimonium ita erunt legitimi sicut illi qui nati erunt post
matrimonium, quoad

A quod nolunt nec possunt
B deum et quoad ecclesiam noluerunt neque potuerunt
sine praeiudicio ecclesiasticae
C dominum deum et quoad ecclesiam nec voluerunt nec potuerunt
sine praeiudicio ecclesiasticae

A ad istud respondere,
B dignitatis respondere ad breue de inquisitione
facienda de bastardia
C dignitatis respondere ad breue super huiusmodi inquisitione
facienda de bastardia

A
B sic obiecta, rescribere domino regi in forma eis demandata per breue suum
videlicet utrum ipse
C sic obiecta, rescribere domino regi
videlicet utrum

A quia
B cui huiusmodi bastardia obiecta esset natus esset ante sponsalia sive matrimonium vel post, et cum
C ante vel post, quia

A hoc esset contra communem formam ecclesiae. Ac
B hoc esset in praeiudicium ecclesiasticae dignitatis
C hoc esset in praeiudicium sanctae ecclesiae ut dicebant, sed

A rogauerunt omnes Episcopi Magnates, ut consentirent
B rogabant Magnates, ut ad hoc consentirent
C rogabant regem et Magnates, quod ad hoc consensum

A quod nati ante matrimonium essent legitimi
B quod nati ante matrimonium ita legitimi essent
C praeberent quod nati ante matrimonium quoad omnia legitimi esse possent

A sicut illi qui nati sunt post matrimonium quantum ad
B sicut et illi qui post sponsalia vel matrimonium quoad
C sicut illi qui post,

A successionem hereditariam quia ecclesia tales habet
B successiones parentum et eorum hereditates quia ecclesia tales habet
C

A pro legitimis, et omnes Comites et Barones una voce
B pro legitimis, et omnes Comites et Barones quotquot fuerunt una voce
C et omnes Comites et Barones quotquot fuerunt

A responderunt quod nolunt leges Angliae mutare quae
B responderunt quod noluerunt leges Angliae mutare quae
C responderunt una voce quod noluerunt leges Angliae mutare quae

A usitatae sunt et approbatae. [Statute Book.]
B usque ad tempus illud usitatae fuerunt et approbatae. [Note Book, Case 1117.]
C usque ad tempus illud usitatae fuerunt et approbatae. [Bracton, f. 416 b.]

Here again the version given in the Note Book seems intermediate between what we may regard as the original document and Bracton's text; the mean agrees now with the one extreme, now with the other.

Summary as to special bastardy.

On the whole then, though it is very difficult to get to the bottom of this curious matter, it brings the Note Book into close connection with Bracton's treatise. Both give similarly interpolated versions of two records; both invert

the true dates of those two records; the mistake (for deliberate misrepresentation seems out of the question) is a very strange one; that two independent persons should have committed it, would be stranger still.

Ad judicium. And now the question whether this Note Book was really Bracton's or no, must be left to the judgment of the learned world. An effort has here been made to state the evidence impartially; but of course I was happy in believing that his work was in my hands, and my eyes may have been shut to facts which made against this pleasant belief. What is now to be wished is that some one will go through the book with the design of showing that it is not entitled to the name under which it is here published. Some one fact established by him, might make worthless every argument drawn from the manifold coincidences: for instance, he might prove that the annotator has referred to events which happened after Bracton's death. But meanwhile and on the evidence here adduced, Bracton seems fairly entitled to a judgment, a revocable judgment. The treatise is absolutely unique; the Note Book, so far as we know, is unique; these two unique books seem to have been put together within a very few years of each other, while yet the Statute of Merton was *noua gracia*; Bracton's choice of authorities is peculiar, distinctive; the compiler of the Note Book made a very similar choice; he had, for instance, just six consecutive rolls of pleas *coram rege*; Bracton had just the same six; two fifths of Bracton's five hundred cases are in this book; every tenth case in this book is cited by Bracton; some of Bracton's most out-of-the-way arguments are found in the margin of this book, in particular that about the binding of land by warranty, that about the ejectment of a disseisor; the same phrases appear in the same contexts, *Juste propter jus sed iniuste propter iniuriam, Nihil certius morte, nihil incertius hora mortis*; Corbyn's case, Ralph Arundell's case are 'noted up' in the Note Book; they are 'noted up' also in the Digby MS. of the treatise; with hardly an exception all the cases thus 'noted up' seem plainly to belong to Bracton's country, to affect persons whom Bracton must have known, Raleighs,

Traceys, Gorges, Blanchminsters, Winscots, Arundells, Punchardons; lastly we find a strangely intimate agreement in error; the history of the ordinance about special bastardy and the *Nolumus* of Merton, is confused and perverted in the same way in the two books. Must we not say then that, until evidence be produced on the other side, Bracton is entitled to a judgment, a possessory judgment?

Et ideo consideratum est quod Henricus recuperauit seisinam suam, saluo jure cuiuslibet.

§ 8. Of Fitzherbert's use of the Note Book.

Whether this book was originally Bracton's or no, there can be but little doubt that some two hundred and fifty years after its making it came to the hands of another very famous lawyer, of Chief Justice Sir Anthony Fitzherbert, who published his Grand Abridgement in 1514[1]. Here again the evidence is the indirect evidence of numerous coincidences: but it is very convincing and should be briefly stated. If Bracton introduces, Fitzherbert closes one great period of English law, the age of the Year Books. A modern reader will probably turn the pages of this book with deeper interest, if he knows that from it Fitzherbert learned all, or almost all, that he knew of any law older than the days of Edward the First. The Note Book came to the hands of Fitzherbert.

When already a great part of my work was done, I remembered having seen in the Abridgement a few cases from the reign of Henry the Third. It occurred to me to ask, Whence did Fitzherbert get these very ancient cases; did he really read the plea rolls, and if so what plea rolls; or had he Year Books earlier than any that have come down to us? I went through the Abridgement, took out all the cases of Henry's time and arranged them in chronological order[2]. The result was very remarkable. Henry reigned Evidence of this.

[1] Printed, it is said, by Pynson in 1514, then by Wynkyn de Worde (?) in 1516, then by Tottell in 1565. I have used the edition of 1565.

[2] I afterwards found that some one else had long ago done exactly the same piece of work; he made a table which is found in a MS. in the Cambridge Library, Dd. vi. 39. I have used his results to correct my own.

for 56 years; Fitzherbert had 207 cases from the first 24 years of the reign; only 7 from the last 32, and these 7 all from a single eyre, the Devon and Cornwall eyre of A.R. 47. Moreover the 207 cases fell into three groups, (1) cases for which Fitzherbert gave year and term, (2) cases for which he gave the year but no term, (3) cases for which he gave year and eyre. The first group ranged over the period beginning Michaelmas A.R. 2 and ending Easter A.R. 18. The second covered the regnal years 19 to 24 inclusive. It seemed then that Fitzherbert had consulted just the very De Banco Rolls, and just the very Coram Rege Rolls, which had furnished matter for the Note Book; for as already explained[1] the De Banco Rolls were terminal rolls, the Coram Rege Rolls were annual rolls. As to the Eyre Rolls, the case was not so clear; Fitzherbert seemed to have had a roll, or two rolls, from which the Note Book had no extracts. But at any rate here were facts which demanded further investigation; it remained to see how many of the 207 cases could be found in the Note Book.

I believe that every single one of them may be found there. In a table printed at the end of this Introduction I have endeavoured to show how this may be done. It will I think be allowed that in the vast majority of instances the case in the Note Book is certainly the case to which Fitzherbert referred; in a few instances this is more doubtful; sometimes the note in the Abridgement is very brief indeed and it would be impossible to say positively that one had found the corresponding record; but on the whole I have no doubt that all the 207 cases are in the Note Book.

It has been necessary indeed to suppose that Fitzherbert or his printer made some mistakes, not very many, in their references to years, terms and eyres; such matters are very apt to go wrong. But some of these mistakes are very instructive; they make it the more certain that the author of the Grand Abridgement was the possessor of the Note Book. The best example is this:—Scattered about in his book Fitzherbert has 8 cases professedly from Trinity term

[1] See above p. 56.

A.R. 9; out of these 8, only 3 are to be found in the Note Book as of Trinity term A.R. 9; the other 5 are there, but as of Hilary term A.R. 17. This five times repeated mistake seems very odd, until one has seen that in the Note Book's capricious arrangement, Trinity A.R. 9 is followed immediately by Hilary A.R. 17; when this is observed the mistake is no longer odd, but the most natural thing in the world. There are several other errors of a similar kind due rather to the Chief Justice than to his illustrious printers. Some doubts were at one time raised in my mind by the apparent fact that he had three cases from a Stafford eyre of A.R. 12 and one from a Leicester eyre of A.R. 15, from which eyres, (if any such eyres there were,) the Note Book had nothing; but the last mentioned case is found in the Leicester eyre of A.R. 5, and the three others in the Suffolk eyre of A.R. 12; 5 has been changed into 15 and *Suff.* into *Staff.* One case we can easily see from the names of counsel concerned in it, belongs not to the reign of Henry, but to that of Edward the Third[1].

This is not all. Under the title *Prohibicion*, Fitzherbert has a continuous string of eighteen cases from Henry the Third's reign. The order in which they occur is the following:—A.R. 2; Mich. A.R. 4; Mich. A.R. 4; Hil. A.R. 6; Hil. A.R. 6; Trin. A.R. 6; Hil. A.R. 8; Mich. A.R. 13; Trin. A.R. 13; Mich. A.R. 15; Pasch. A.R. 15; Mich. A.R. 16; Trin. A.R. 9; Hil. A.R. 17; Mich. A.R. 18; Trin. A.R. 4; Hil. A.R. 5; Hil. A.R. 7. It is a curious order, with its interpolation of A.R. 9 between A.R. 16 and A.R. 18 and its leap backwards from A.R. 18 to A.R. 4. A curious order; but the order of the Note Book. There are several other instances of the influence exercised by the arrangement of the Note Book over the arrangement of the Abridgement; but this is the most perfect[2].

After weighing this evidence the reader will hardly doubt that our MS. came to Fitzherbert's possession, that he relied on it, studied it, used it largely. His 200 cases are found in

[1] The writer of the Cambridge MS. Dd. vi. 89 has observed this. In the cases from Henry's reign no counsel are named because the cases come from the record and not from a Year Book.

[2] See e.g. the titles *Dower*, *Droyt*, *Essone*.

this collection of 2000. That this should be the result of chance is beyond measure improbable; there were hundreds of thousands of cases on the rolls of Henry the Third. And then why stop citing *placita de banco* exactly at Easter A.R. 18; why cite *placita coram rege* just from the years 19 to 24?

The last 32 years of the reign, as already said, are represented in the Abridgement by 7 cases all from the Devon and Cornwall eyre of A.R. 47. Of these I have nothing to say. It is plain that they were taken, not from a Year Book, but directly or indirectly from the record. Possibly Fitzherbert had come by a stray roll. There seems no reason for supposing that the lost end of the Note Book had cases from this eyre, an eyre of Bruce and Middleton which took place near the end of Bracton's life; the other 207 cases can be so satisfactorily accounted for, that the loss would seem to have happened before Fitzherbert's day. The appearance of these 7 lonely cases should not, as I think, detract from the force of the evidence stated above. They serve only to make the surrounding darkness visible, these 7 cases from 32 years, following 207 cases from 24 years. The author of the Abridgement would have gladly given more if he could have got them without much trouble; but the days when lawyers habitually studied the plea rolls, if such days there ever were, were long since past; the Year Books themselves were becoming an unmanageable mass; good luck and the splendid industry of the thirteenth century supplied Fitzherbert with a collection of cases from Henry the Third's reign; he used them. We may guess that the few French words scribbled here and there in the margin of the Note Book in a hand which seems to be a hand of Fitzherbert's day[1], were written by him; they are of no value, but just catch-words, showing under what title the case against which they are written might be arranged in an abridgement.

Influence of the Note Book upon Coke.

For a second time therefore our Note Book entered into the history of English Law. Mediately through Fitzherbert it became one of Coke's main authorities, (the treatises

[1] See above p. 65.

of Glanvill and Bracton are the others,) for what was law before the days of Edward the First, his only authority for the case law of those days. One does not turn over very many folios of the Commentary upon Littleton without seeing a stray reference to some case of Henry the Third's reign. That is a reference through the Abridgement to this Note Book. To take one example—"A man" says Coke[1] "shall be tenant by the curtesie of a house that is *Caput* "*Baroniae* or *Comitatûs*: but it appeareth by 4 H. 3. Dower, 180, that a woman shall not be endowed of it." If the reader now cares to verify this citation he can easily do so. Turning to the table at the end of this Introduction he will find Fitzherbert's 'Dower 180' under A.R. 4, and will then be directed to Case 96 in the Note Book, where he will find the ultimate warrant for what Coke says. That Coke had studied at first hand the rolls of the thirteenth century, there are very few signs indeed; he was dependent on Fitzherbert and Fitzherbert was dependent on this Note Book. And so the labours of the copying clerks, the generous love for learning of him who set them their task and paid them their wages, bore fruit again and again; will bear fruit yet once more, for the history of English law will some day be written.

§ 9. *Of the making of this edition.*

Scheme of this edition.

It remains to describe the relation of the text here printed to the MS. at the British Museum. In the MS. the usual stenographic signs have been very freely used: I should guess that at least a quarter of all the words in the Note Book are in some way or another abbreviated. Many of these signs have a perfectly distinct meaning and give very little trouble to any one who has once learned their significance. But besides these the indiscriminating dash is largely employed to represent every kind of termination, more especially when the words are part of some common formula. Thus, *Assisa venit recognitura* is hardly ever

[1] Co. Lit. f. 30 b.

written in full; instead of it one finds *Ass̄ ven̄ rec̄;* I believe that I have never but once seen the whole word *recognitura*. The one syllable *rec̄* is made to do duty for every voice, mood, tense, number, person, case of the extremely common words *recognoscere, recognitor, recognitio, recuperare.*

Expansion of contractions.

Now it may well be urged that the fairest way in which to print the matter thus written is to use what is called record type, type imitating as closely as possible the various marks of abbreviation. Certainly that is the fairest way; but then it requires of every reader that he shall be instructed in an art which, though it is not really difficult, still can not be mastered without some trouble and practice. It might be wished that there was a large class of students so much interested in the history of law as to be able to read the original records readily and rapidly. But who will say that such a class exists? The fact is patent that for two centuries past extremely little use has been made of the invaluable plea rolls; also that extremely little use has been made, at least in this country, of those rolls of Richard's reign and John's, which Sir Francis Palgrave printed in record type[1]. The old fables and fallacies are repeated; tenth-hand hearsay is preferred to first-hand evidence; it is so much easier to copy down as gospel truth what Coke said, than to face what one is like to call a repulsive mass of pothooks and hangers. An appetite for abbreviated documents may come in time; even record type may be pronounced unsatisfying; readers will not be content until they can see the very upstrokes and downstrokes reproduced by photography; but to suppose that such an appetite exists at the present day, would be a foolish dream; to provide food for it, would be waste of money.

Sources of error.

Again, mistakes of the worst and most dangerous kind, no type however ingenious can prevent. The very commonest source of misreadings is the likeness between *u* and *n*, and between *ui*, *ni*, *iu*, *in* and *m*; such a word as *minimum*, if

[1] Blackstone believed that pleas were enrolled in French until the reign of Edward the Third. Clearer proof that he never saw a plea roll of earlier date there could not be. Bl. Com. vol. 3, pp. 317, 319.

at all badly written, becomes a sore puzzle. The resemblance again between *c* and *t* is very fatal; in some hands and some combinations they are practically indistinguishable. An editor meets with a word which may be *indiciis* or may be *iudiciis*, which may be *amita* or may be *amica*. Here the type-founder can not help him; the context must tell him which word it is, and if there is any real doubt, he should state this in a foot-note. What is more, the stenographic signs are in general the very easiest things to read and to understand, and if one can not be trusted to expand them correctly one can not be trusted to copy them correctly. Take the common abbreviation of *persona*; one meets a *p* surmounted by a little *a* and with a line drawn through its tail, ꝑ; the man who does not happen to know what this means, will probably think that the *p* is not a *p*. My belief is that the use of record type saves but few blunders of serious importance at the cost of deterring many readers.

Therefore in this edition an attempt has been made to write out the words in full, except when so to do seemed really dangerous. I can not but suppose that I have made mistakes and therefore ought to warn the reader of the perils which he may run if he puts too much faith in what is here printed. Some instances shall be given. **A warning to readers.**

Tenses and moods are often doubtful especially when the verb occurs in some common formula. Thus when a demandant is successful, it is adjudged *quod rec' seisinam suam*. Now in this context, when (which is seldom the case,) the word is written in full, I have seen *recuperet* and *recuperat*, but far more commonly *recuperauit*; it is adjudged, not that the demandant do recover his seisin, but that he has recovered his seisin; the judgment seems to recognize an already accomplished fact; therefore I have used the perfect indicative as the proper expansion of the ambiguous *rec'*. Tenses and moods in the common formulas the reader must therefore be asked to regard with some suspicion; I have attempted to find out from the best evidence, what the phrases really were, but the terminations may sometimes express a hasty inference from an insufficient induction. **Difficulty as to terminations.**

Difficulty as to words.

In some instances it is very hard to find what was the exact form of some very common word. Just because it was so very common, it was never written in full. The word which stands for our substantive *common* (in such phrases as 'common of pasture', 'he claims common',) is a good illustration. One does not often see it in full; the form *communia* seems to have been used at a later time and is found in the printed law books; but it seems plain to me from clear examples that in Bracton's day the word was *communa*, and therefore *communa* I have printed. There is a similar difficulty about the word which our *esplees* translates; hardly ever will one find more than *expl'*. I have occasionally seen *expletia* or *explecia*, and this form seems ultimately to have prevailed in our Law Latin; but much more often have I seen *expleta*, and this I suppose to be the better and the older form. Having come across the word *exhereditacio* written in full, I fear that I may have used this form too often, and that in some instances it would have been better to print *exheredacio*. These are specimens of the doubts that have occurred to me.

Difficulty as to grammar.

Grammar too has been troublesome. In our Law Latin, for example, people are always coming to do this, that and the other, they come to make suit, to view the wound, to collect apples, to certify the justices, *veniunt ad faciend' sectam, ad videnď plagam, ad colligend' poma, ad certificand' justic'*. I have been persuaded by numerous instances that in such cases the gerund was used, not the gerundive; that one ought to read, *ad faciendum sectam, ad videndum plagam etc.*; but except in my first few sheets, I have left the word abbreviated when I found it abbreviated, and if I use the gerund it is because in the MS. the gerund is written in full. As another illustration of the verbal difficulties that have occurred, notice may be drawn to a curious use of the word *perquirere*. It begins by meaning 'to acquire', 'to purchase'; then it is specially used of purchasing an original writ, the first step in an action; *A perquirit sibi breue de recto versus B;* then this phrase is twisted and we find such forms as *A perquirit sibi per breue de recto*, and *A perquirit se*

versus B; in short, the terms *perquirere sibi*, *perquirere se* become part of a technical slang, and they mean 'to bring an action'. It is sometimes difficult to expand the signs in which such slang is expressed. I have tried to be careful of small things. I have not said with the immortal Bartolus, 'De verbibus non curat jurisconsultus'[1]; still I have felt with a yet more famous lawyer, that

> 'Law is the pork, substratum of the fry,
> 'Goose-foot and cocks-comb are Latinity.'[2]

Some blunders in mediaeval etymology and grammar should be forgiven if the legal sum and substance of these two thousand cases are rendered with fair correctness.

MS. printed word for word. Contractions being expanded, my endeavour has been to reproduce what was in the MS. word for word, never altering what was there in favour of something which might be better grammar or better sense. Even glaring false concords and obvious clerical errors I have kept in the text suggesting a better reading in a foot-note, when of this there seemed any need. On the very few occasions on which for the reader's convenience an opposite policy has been adopted, express warning of this is given in a foot-note. When a word in the text is printed in italics this means that in the MS. it is indistinct or very doubtful. The first page of the MS. is sadly defaced; in my representation of it the words printed in italics and within brackets, stand for words which are almost illegible. When the first page is past, all goes pretty smoothly.

Spelling preserved. Again I have tried to preserve the spelling. Consequently, for example, I have never used the diphthong *ae* but have left the simple *e* of the original. On the other hand I have not preserved the capricious use of capital letters, for this has no grammatical significance, but is a matter of mere convenience. So both *u* and *v* which are very indiscriminately interchanged are here represented by *u*; it seemed to me that greater fidelity would simply make

[1] See the questionable story in Hallam, *Hist. Lit.* vol. 1, ch. 1, § 75.

[2] Dom. Hyacinthus de Archangelis, in Browning, *The Ring and the Book*, lines 152—3.

unnecessary puzzles; but perhaps in this I was wrong. In expanding contractions I have sought to maintain the strain of spelling, but in some respects this varies from clerk to clerk and I may not always have succeeded in catching it. One may easily see, for example, that they usually wrote *umquam* instead of *unquam*; but whether they wrote *numquam* instead of *nunquam* is more doubtful, for this word is almost always abbreviated. But the most difficult problem is caused by the great similarity between the characters *c* and *t*, and the tendency of *t* in particular combinations to become *c*. For some clerks, one is inclined to lay down the rule, that whenever in a Latin word *t* is followed by *i* and then by another vowel, the *t* has become *c*; thus not only does one find as matter of course such forms as *aduocacio*, *inquisicio*, *conuiccio*, *contradiccio*, but the genitive plural of *pars* is clearly *parcium* and the perfect of *peto* is *pecii*. But this rule does not hold good for all writers; for example, the annotator of the Note Book seems generally to use *t* where we should use it. Perhaps in the text here printed the *c* has been rather too freely used; but sometimes it is almost impossible to say whether a clerk has written *peciit* or *petiit*.

Local names. Again the terminations of the names of places are so commonly abbreviated, (e.g. *Ditton'*, *Trumpinton'*, *Hatfeld'*, *Hatfeud'*, *Winterburn'*, *Watford'*, *Wokindon'*) that often it is hard to decide whether what is omitted is a latinized termination, or a final indeclinable *e*. I doubt whether any universal rule could be laid down. Many of the larger towns certainly had declinable names, e.g. events take place *apud Gloucestriam* or *apud Gloverniam*; on the other hand it seems to me that some names were treated as indeclinable, e.g. those ending in *ham*; but about many of them I am doubtful and the reader should know of this doubt.

Punctuation. As regards punctuation. Both the Note Book and the Rolls are punctuated; the dread of stops had not yet taken possession of lawyers; and the Note Book is often very stupidly punctuated, for the copyists did not care to understand what they wrote. For a while I thought that fidelity

obliged me to reproduce their vagaries and I did not grow wiser until some sheets were beyond my control. After this I placed a few commas and full stops where I thought that they would be useful and called attention in foot-notes to any departure from the original which seemed of any importance. In general a legal record is quite unambiguous when all stops are omitted, and punctuation should be treated as of no authoritative value whatever.

Marginal notes.

The notes found in the margin of the MS. are printed in the margin of this book. It should be understood that all matters in the margin, except the 'marginal venues', were written by him whom I have called 'the usual annotator', unless something to the contrary is said in a foot-note.

Collation of Plea Rolls.

When this was possible I have collated my transcript of the Note Book with the rolls. What rolls are extant the reader may discover from a table at the end of this introduction. To indicate rolls which have been 'scored', and which therefore, as I infer, were used by the maker of the Note Book, I have employed the letter A: other rolls are referred to as B and C. A foot-note to the beginning of a case refers to the membrane of the roll on which it is found. The object of the collation was merely to discover whether the cases were on the rolls, whether they were copied with substantial accuracy, whether the roll would explain what the Note Book left unexplained. This is an edition of the Note Book not of the rolls; therefore I have not as a rule supplied what the maker of the Note Book systematically omitted, e.g. the names of unimportant persons, nor have I thought it expedient to notice variances except when these were of real legal importance. He was a lawyer and his book, whatever interest it may have for others, must in the main be a book for lawyers.

§ 10. *Of some noteworthy cases in the Note Book.*

Notable cases.

By a few last paragraphs attention may be begged for some of the matters in the Note Book which seem the most noteworthy.

Cases of historic importance.

The record which shows how the outlawry of Hubert de Burgh and of the barons who took his part was reversed[1], may be welcome even to those who are not lawyers; and there are some other records which illustrate the struggle of 1233[2]. A statement by the king's court in 1237 that Gualo the papal legate had been 'quasi tutor domini regis et custos regni' deserves remark[3]. There is a similar statement that Hubert de Burgh 'habuit regnum Angliae in manu sua'[4]. The latter occurs in a case touching the feudal relations between the king of Scotland and the king of England, a case which contains an emphatic statement of the doctrine of prerogative wardship. Four valuable entries concern the partition and therefore destruction of the most formidable outcome of English feudalism, the palatinate of Chester[5]; the difficulty of making a palatine earl answer out of his own palatinate, the ascription of palatine rights to the Earl Marshall, the demand for a *judicium parium*, the doubts of the assembled magnates over this unprecedented case, the rejection of foreign, presumably French, precedents, the reference to Roman or Canon law as a possible supplement for English jurisprudence, the afforcement of the court, the elaborately reasoned judgment, will not go unheeded; clearly these were important suits. One of these entries and another record[6] here printed are Coke's oldest authorities, (he had them from Fitzherbert,) for the law as to the abeyance of titles of honour[7]. There is a claim by William Longsword to the earldom of Salisbury, or perhaps to a

[1] Case 857.

[2] Cases 741, 750, 770, 1108, 1111, 1113, 1124, 1136, 1141.

[3] Case 1219: compare Stubbs, *Const. Hist.* vol. 2, p. 31, note 1.

[4] Case 1221.

[5] Cases 1127, 1213, 1227, 1273.

[6] Case 12.

[7] Co. Lit. 165 a.

hereditary shrievalty of Wiltshire[1], and there are several cases which turn on the doings of Henry Fitz Count who had asserted a right to the county of Cornwall and issued writs in his own name[2]. Traces of that great disseisor Fawkes of Breauté, are not far to seek; William Marshall the younger offers a thousand marks for the privilege of fighting him[3]. The court suspends its sittings in order that William of Albemarle may be besieged and suppressed[4]. Law has to recognize that a *tempus guerrae* is not uncommon.

That a large mass of material for the history of many famous families is here printed for the first time, will perhaps in the eyes of some be the best point of this book. Title is often pleaded from the days of Henry the First, and the Norman Conquest is still the period of prescription. Family history.

Some of the pleas which followed the king are of special interest as showing the action of the royal court where royal rights are concerned. Whether the king can be compelled to warrant his gifts seems a moot point, or rather a political question of grave moment[5]. It seems probable that he does justice in person and decides debated problems. If the second husband is tenant by the curtesy, it is because the king does not wish to change the ancient custom of England[6], though Segrave held that this custom was unreasonable[7]. If the king's rights are concerned, his pleasure must be taken; he has no superior, he cannot be summoned, none may give him orders; therefore no action will lie against him[8]. His council, which is now becoming a definite body, supervises the administration of the law. Justices in eyre are summoned before the king's council and the justices of the bench, and are amerced for having hanged a man unlawfully[9]; the justices of the bench themselves have to come before the council and answer for their mistakes of law; they plead that they knew no better[10]. The open sale of justice is becoming a thing Constitutional Law.

[1] Case 1235; see Mat. Par. vol. 4, p. 630. A striking application of the rule, that without words of inheritance no fee can be created.

[2] Cases 85, 1512, 1666.

[3] Case 102.

[4] Cases 1492—3—5 etc.

[5] See Index, *King disseisin by*, *King as warrantor*, etc. Br. f. 381 b.

[6] Case 1182.

[7] Br. f. 438.

[8] Case 1108.

[9] Case 67.

[10] Case 1166.

of the past; but there are sundry procedural advantages for the grant of which a mark or demi-mark is expected, and occasionally heavy sums are offered and accepted, even a thousand pounds[1].

Courts Christian.

The relations between the spiritual and the temporal jurisdictions are brought out by a copious supply of 'prohibitions'. The lay court seems to have spent a very large part of its time in preventing the Courts Christian from doing business, in watching jealously their interferences in case of breach of faith (*laesio fidei*), their efforts to sanction wills of land[2]. One may see here in detail the grievances of which Grosseteste and churchmen of the straiter sort complained—not real grievances according to Bracton; but Bracton, if an ecclesiastic, was first and foremost a royal judge[3]. More valuable yet are the glimpses we get of the feudal and communal courts, especially of the latter.

Communal Courts.

The county courts are busy, largely attended by the freeholders of the shire, who have to sit there as judges and make the judgments. The work is burdensome, but judgments cannot be made by the sheriff; the work is hazardous, for disappointed litigants are apt to complain to the royal court, and then four knights must repeat the record of the county court, and if it be contradicted, then the county will have to fight for it by the body of the county champion[4]. For all manner of purposes four knights of the shire are employed, they must ride to see whether a sick man has appointed an attorney, whether an essoinee is actually in bed without his breeches; the day seems, (and of course really is,) near at hand, when knights of the shire will represent the shire in a parliament. Nor will it escape us that all sorts of private men had to labour much and journey far in the work of justice. Notwithstanding the Great Charter[5], notwithstanding an occasional use of the *nisi prius*[6], four knights, twelve jurors, are constantly wanted at Westminster, and come they must from the furthest corners of the kingdom. It

[1] Case 1106.
[2] Index of Actions, *Prohibition*.
[3] Br. f. 401 b, 416 b.
[4] Index, *Court County*, *Court Hundred*, etc.
[5] Charters of 1215, sec. 18; 1216, sec. 13; 1217, sec. 13, 14, 15.
[6] Index, *Nisi Prius*.

is of men thus drilled to do justice that parliaments can be made[1].

Procedure.

A little can be learnt even of the procedure in the local courts, procedure by suit and compurgation and battle, a procedure which knows nothing of that new-fangled royal institution, the jury. 'Who shall go to the proof?', and not 'Who has proved his case?' was the question which perplexed the hundred court of Sonning[2]. When Edith of Wackford vindicated stolen swine in the manor court at Windsor, she held one of the pigs in her hand[3]. But in the king's court itself trial by jury was still struggling with trial by battle and with compurgation. Wager of law was still permissible within a large, though always narrowing, sphere[4]. Many records bring home to us the reality of that production of suit, which even in our oldest Year Books is fast becoming an unreality[5]. One cannot as a general rule put oneself upon one's country to prove an assertion without first (as we should say) 'making a prima facie case' by the testimony of *sectatores*. Especially in cases relating to dower, it is so common for the judges to decide disputed questions of fact upon the testimony thus produced, and without the use of a jury, that the Note Book may leave us wondering at the very complete victory that trial by jury gained over 'trial by witnesses[6]'. The many cases about suit and wager of law will help towards the understanding of several passages in our later legal history, and so will the many cases which place suit alongside charter or writing (*carta, scriptum*) as the known modes of evidence, and contrast them with nude parol (*simplex dictum, simplex loquela, simplex vox*). We may be led to doubt whether the judges of this age regarded a seal as having any mysterious virtue; on the

[1] It is plain that for one reason and another, many assizes of novel disseisin and mort d'ancestor were taken at Westminster, despite the charter; see Case 1478.

[2] Case 1115.

[3] Case 824.

[4] Index, *Law, Wager of*.

[5] Index, *Suit*.

[6] As to 'trial by witnesses' see Blackstone, *Com.* vol. 3, p. 336, and the valuable remarks in Brunner, *Entstehung der Schwurgerichte*, pp. 432—3.

[7] Index, *Parol*, *Nude*. The cases, as it seems to me, go far to support the theory of Mr Justice Holmes as to the origin of the doctrine of 'consideration'. *The Common Law*, p. 257 fol.

other hand the practice of collating seals may help us to understand how a rule of evidence became a rule of substantive law[1]. The judges can tell the date of documents by the appearance of the wax; one who was bold enough to forge an original writ without first mastering the style of the Chancery is detected and hanged out of hand in a singularly summary fashion[2]. Forgery, and the fraudulent use of seals are, one observes, not uncommon, and the religious houses profit by death-bed gifts of questionable validity.

Parties interrogated.

The court's habit of interrogating the parties or their attornies, of thus eliciting fatal admissions and saving the trouble and cost of trial, may seem very rational to us and perhaps very strange, though Coke has noticed it[3]; and we may be surprised at the ease with which third parties intervene of their own accord or are summoned to declare whether they claim any right. It will perhaps be doubted whether the history of legal procedure has been the history of an unbroken progress, whether the necessary growth of a class of professional lawyers if it did much good, did not also some harm.

Archaic customs.

A few curious archaisms appear from time to time. Of certain tenants in Kent it is written, "if one of them has a child born in fornication he shall pay childwyte, and if any married man has a son born in adultery he shall be in the king's mercy for all his movables, and if one of them sheds blood he shall pay blodwyte[4]". In Herefordshire, it seems, they still pay and receive the wergild of the murdered man and hold this ancient custom dear[5]. All this while Bracton is speculating about the *animus possidendi* and writing his enlightened sentences. On the whole, however, we hear less of local customs than might be wished; they were rapidly disappearing before the common law of the king's court. The attachment of the men of Kent to their traditional usages is well marked and is very interesting.

Kentish customs.

There is question whether a Kentish widow loses her dower

[1] Index, *Seals, Collation of.*
[2] Case 1847.
[3] Co. Lit. 304 a.
[4] Case 753.
[5] Case 1474.

by a second marriage; knights of the shire intervene to pray that the liberties and customs of the county may be respected[1]. There is question whether Kentish land escheats for felony; the parties put themselves on the judgment of the justices and eight knights of the shire: the knights declare that they had never known a case of any Kentish knight being hanged, but that undoubtedly in gavelkind there was no escheat for felony *secundum legem Kantiae*[2]. For some cause or another the county spirit seems to have been stronger in Kent than elsewhere[3].

Land law. Land law, which feudalism would make the foundation of all law, naturally fills a large space. The actual working of the military tenures will be much better seen in these records than in the Year Books, for feudalism is on the wane before the Year Books begin. Much that is quite new is not to be expected, for the land law was so vastly important that the main outlines of its history were carefully preserved in legal tradition; but numberless points are here set in clear light; thus the lord's right of marriage as it was before the Statute of Merton is well illustrated. Subinfeudation was going on apace and giving rise to intricate problems; especial notice may be taken of those arising out of the rule that the same person cannot be both lord and heir. A series of records which goes far behind the *Quia Emptores* should be valued by all who wish to understand the practical meaning of that statute. We might wish to read more of that forerunner of the estate tail 'the fee conditional at common law', for much that is written in later books about it seems hardly better than guesswork[4]. Certainly it was a quite common thing that land should be given to a man and the heirs of his body, still commoner that land should be given *in maritagium*[5]. Several points may be

[1] Case 1338.

[2] Case 1644.

[3] See Dr Kenny's *Essay on Primogeniture*, p. 28 fol.

[4] So far as I can discover Coke (and when one has said Coke one need not mention later lawyers), had no authority for anything that he said about conditional fees older than the statute which changed them into 'estates tail', except only the case which I here print as 61 and which he had from Fitzherbert, *Formedon*, 64.

[5] Index *Marriage portion*, *Estates*, *Fee conditional*. I do not speak of

made clear by this book, but the exact extent of the tenant's power of alienation does not come out very plainly. It should be remembered the whole learning and even the very conception of 'estates' belongs to a later time: Bracton had not the word 'estate', nor any equivalent for it. Also it should be remembered that but a short time back the man who held land to him and his heirs could by no means always disappoint his heir apparent[1]. Just a trace or two of this we may find, but on the whole it belongs to the past; the heir apparent may be disinherited. As against the lord freedom of alienation, (in favour whereof Bracton argues with unusual earnestness[3],) seems very perfect, and we look in vain for cases to show that the restrictive clause in the charter of 1217 had any considerable effect: we may well doubt whether the king's justices thought well of that clause or of some other clauses in the charter[4]. Primogeniture is extending itself rapidly, but there does not seem to be any very definite presumption against the partibility of socage land, and much of it is still partible[5]. The so-called 'Borough English' custom is regarded as a mark, though not a complete proof, of villein tenure[6].

Possession and Property.

The operation of the possessory assizes may be seen in abundant examples. Probably we shall think well of the novel disseisin, a true *possessorium*, which worked speedily and effectively. The notion of seisin is firmly grasped; the parties, the jurors, are pinned down to the question whether there has been seisin and disseisin, and, if so, there must be no talk of proprietary right. Taking up at this point the

frank-marriage because not every *maritagium* is *liberum*. This term *frank-marriage* has been used so as to confuse (as we should now say) the nature of a tenure with the nature of an estate. As to grammar, *tenere in maritagium, in dotem etc.* are far more common than *tenere in maritagio, in dote etc.*

[1] Glanvill, Lib. 7. c. 1.

[2] Case 1054.

[3] Br. f. 45 b.

[4] Charter of 1217, sec. 39. See Case 1248, the only case which shows the restraint on alienation. Gifts in mortmain were freely made as one may see from almost every page of the book. The Statute de Viris Religiosis begins with a reference to an earlier provision; this is not, as often supposed, a reference to the charter of 1217; it is a citation of the Provisions of Westminster of 1259 cap. 14.

[5] Index, *Descent, Partible Inheritance.*

[6] Index, *Descent, Villeinage.*

history of the so-called[1] 'real actions' we find them no such inextricable tangle as they afterwards became. On the one hand there stands the proprietary action, the writ of right, which ought normally to be tried in the lord's court, which must at any rate be begun there. It leads to battle or the grand assize and is a very slow and solemn affair. On the other hand there are the rapid royal remedies whereby Henry the Second cast his kingly protection over the seisin of every freeholder, very summary remedies indeed. The interval between these extremes is being filled up gradually, by writs of entry devised to meet cases in which the assizes will not lie, but in which some definite flaw of recent date can be found in the tenant's title, e.g. though no disseisor, he has come to the land through or under a disseisor, or he is a tenant holding over after his term has expired, or he acquired his seisin from a dowager, from a husband who alienated his wife's inheritance, or again his feoffor was a guardian, an infant, or of unsound memory. In theory, it may be, there is here an extension of the royal protection of possession. Feudal principle, the words of the Great Charter[2], forbade the king's court to make itself a court of first instance for the trial of proprietary right, save when the tenant held immediately of the king. Hence the elaboration of these writs of entry; hence also the fetters which confine them; they can only be used when the flaw in the title is recent, and when there have not been more than two subsequent alienations or transmissions. When William Raleigh invented the writ of cosinage[3] as a supplement for the mort d'ancestor, there was 'contencio inter magnates' over it; for some held that it was against the Charter; Bracton had to argue that they were wrong[4]. A gradual process by which the king's court makes itself (practically, not theoretically, no not until 1833[5],) the one court of first instance even for

History of the real actions.

[1] The notion that an action is 'real' simply because land can be obtained by it, is not of Bracton's day. He calls the novel disseisin a personal action: Br. f. 161 b; so too the *quod permittat* for common, is personal, Br. f. 284 b.

[2] Charters of 1215, sec. 34; 1216, sec. 27; 1217, sec. 30.

[3] Case 1215.

[4] Br. f. 281.

[5] 3 & 4 Will. IV. c. 27, sec. 36.

proprietary causes—this seems the main clue to the history of the real actions. In this book we may pick up the thread. It is hopeless to attack the matter in the Year Books without a training in earlier law; the material has become much too complex; a beginning must be found when as yet the writs of entry were novelties and the proprietary writ of right was still sharply opposed to the possessory assizes[1]. This sharp contrast is emphasized by the large mass of litigation about advowsons and presentations which is here published. It may be repulsive to the modern reader, but if he is in earnest with legal history he may be asked not to shirk it, for in studying it he may acquire a tight hold of the idea of seisin. The intrusion of that all pervading idea even into the region of marriage will not escape him[2].

Uses, common, villeinage.

In the eyes of a few connoisseurs the gems of this collection may be two cases which seem to show that feoffments to uses are as old as the days of Henry the Third[3]. Perhaps the cases which will find most readers (if indeed any of them be read at all) will be those about common rights and those about villeinage. As to common rights, the typical struggle of the time is not a struggle between lord and commoners, but a struggle between the men or the lords of two different townships. The social and economic position of the villein we are beginning to understand from the monastic cartularies, but to fix his legal position we must have litigation in the king's court, and this desirable end some of the many cases here printed should certainly serve.

Hopes.

Lastly there are two tasks which should be undertaken without much delay. In the first place Bracton's treatise ought to be carefully and lovingly edited. If this be not done by an Englishman, it will be done by a foreigner, as it is written, *Vocabo super eos gentem robustam et longinquam et ignotam cuius linguam ignorabunt*[4]. In the second place

[1] The whole history of the real actions must be utterly unintelligible to any one who believes with Blackstone (*Comm.* vol. 3, p. 184) that the writs of entry were older than the assizes. See Brunner, pp. 405—7. Also the Placitorum Abbreviatio.

[2] Br. f. 306, 306 b. Cases 642, 1142, 1597, 1703.

[3] Cases 1683, 1851. See the Article on *Early English Equity* by Mr Justice Holmes in *L. Q. R.*, vol. 1, p. 162.

[4] Br. f. 31.

the history of English law, at least from the thirteenth century downwards, should be thoroughly well written. That both these great works will be made easier by the Note Book, I make no doubt; that this edition of it may not be too bad to be useful, has been and yet is my hope[1].

[1] In the summer of 1885 the case of *Bidder* v. *Bridges* came before Mr Justice Kay. It was an action for common rights over land at Mitcham in Surrey. Mr R. E. G. Kirk, the record agent of the plaintiff commoner, in the course of a long and laborious search for documents, found in a cartulary of Merton Priory a copy of the assize here printed as Case 1284. He then found the same case in the Note Book. The roll being lost, it was desired to put these copies in evidence. Mr Kirk found that I was engaged in transcribing the Note Book and collating my transcript with such rolls as were extant. I was therefore subpoenaed as a witness and stated what I then knew as to the general accuracy of the extracts in the Note Book and as to the marks on the rolls; of course I was not asked anything about Bracton. Kay J. decided that the copy could not be received as evidence and the action was dismissed. The plaintiff appealed, but unsuccessfully; I was not present in the Court of Appeal; I believe that there was some talk about the book and that the Lords Justices looked at it; but whether the question of its admissibility was determined, I do not know. The decision of Kay J. is reported, 54 L. T. 529; 34 W. R. 514; but I have not been able to find any report of the proceedings in the Court of Appeal.

END OF INTRODUCTION.

Postscript.

I HAVE said on p. 7 that Britton and Fleta carry their accounts of the writ of right to the point at which Bracton stops short. This is true of Fleta, but not of Britton; he does not get so far. As to the incompleteness of his book and of Bracton's also, see Nichols, *Britton*, vol. 1. p. xlv. It is very remarkable that we have no account of the duel and the grand assize later than that given us by Glanvill.

As regards the manor of Tykenbrede which Bracton held for his life (p. 16) see Case 1151 in which a Ralph of Tykambreche is mentioned. I cannot find any place in Cornwall with which to identify it other than Tuckenbury,

the termination of which name may, as it seems to me, be a rationalistic perversion by English mouths of something Celtic.

On pp. 50, 51 I have said that there are but three occasions on which Bracton notices a difference of opinion between Segrave and any other judge, that once the difference is between Segrave and Pateshull, twice between Segrave and Raleigh. I now see that on f. 438 where Bracton speaks of Segrave's doctrine about the second husband's curtesy, he does not say that the opposite opinion was held by Raleigh. My statement therefore would be more correct if it ran thus:—"Once the difference is between Segrave and Pateshull, once between Segrave and Raleigh, and once Segrave is represented as holding that the law has been misunderstood and perverted." It seems clear that Segrave's opinion as to curtesy did not become law. See Case 1182, also the Statute *de Donis* and Coke's comment thereon, 2 Inst. 336, 8 Rep. 35 b.

On p. 76 I have said that Bracton apparently had three De Banco rolls from which there are no excerpts in the Note Book, but that this number might perhaps be reduced were the manuscripts examined. I believe that I can reduce it by one. In the first four manuscripts at which I look (MA, MB, MC, MI) the case which the printed book (f. 342 b) cites from Hilary A.R. 16, is cited from Hilary A.R. 18. I have not however been able to get rid of the citations from Trinity A.R. 5 and Trinity A.R. 7.

As regards Cole's case (p. 100), it may be observed that one Roger Cole was a canon of Exeter in 1224, see Case 920.

END OF POSTSCRIPT.

TABLE THE FIRST.

TABLE SHOWING THE NAMES OF THE JUSTICES WHO SAT AT THE BENCH DURING THE REIGN OF HENRY THE THIRD.

NOTE:—This Table is the result of a comparison of many, but not nearly all, of the Feet of Fines yet extant. When a justice is mentioned in some but not all the fines of a term his name is enclosed in [ ].

A.D.	A.R.	TERM.	
1217	1—2	Mich.	
1218	2	Hil.	M. Pateshull, R. Hareng, S. Segrave, S. de L'Isle.
		East.	Pateshull, Hareng, Segrave, de L'Isle, [J. Gestling], [Eustace of Falconberg, the Treasurer].
		Trin.	Pateshull, Hareng, Segrave, Gestling, de L'Isle.
	2—3	Mich.	William Earl of Arundel, Pateshull, Alan Basset, Hareng, Segrave, Gestling, de L'Isle.
1219	3	Hil.	
		East.	
		Trin.	Pateshull, Hareng, Segrave, de L'Isle.
	3—4	Mich.	[Hubert de Burgh], Pateshull, Hareng, Segrave, Gestling, de L'Isle.
1220	4	Hil.	Pateshull, Hareng, Segrave, Gestling, de L'Isle.
		East.	[Hubert de Burgh], [Robert Earl of Oxford], Pateshull, Hareng, Segrave.
		Trin.	Earl of Oxford, Pateshull, Hareng, [Segrave], Thos Heydon.
	4—5	Mich.	Earl of Oxford, Pateshull, Hareng, Segrave, Heydon, Rob. Lexington.
1221	5	Hil.	Earl of Oxford, Pateshull, Hareng, Segrave, Heydon.

A.D.	A.R.	TERM.	
		East.	Earl of Oxford, [John of Monmouth], Pateshull, Hareng, Segrave, Heydon, R. Lexington.
		Trin.	
	5—6	Mich.	[Pateshull], [Segrave], Hareng, Heydon, [R. Lexington].
1222	6	Hil.	[H. de Burgh], [John of Monmouth], Pateshull, Hareng, Segrave, Heydon, R. Lexington.
		East.	Pateshull, Hareng, Segrave, Heydon, R. Lexington.
		Trin.	The same.
	6—7	Mich.	The same.
1223	7	Hil.	Pateshull, Hareng, Segrave, Heydon, R. Lexington, G. le Savage.
		East.	[H. de Burgh and] the same.
		Trin.	
	7—8	Mich.	Pateshull, Hareng, Segrave, Heydon, R. Lexington, Savage.
1224	8	Hil.	The same.
		East.	Pateshull, Thos. Multon, Segrave, Heydon, R. Lexington, Savage.
		Trin.	The same.
	8—9	Mich.	The same.
1225	9	Hil.	Pateshull, Multon, Heydon, R. Lexington, Savage.
		East.	The same.
		Trin.	The same.
	9—10	Mich.	The same.
1226	10	Hil.	Pateshull, Multon, Heydon, R. Lexington, Savage, Warin Fitz Joel.
		East.	The same.
		Trin.	
	10—11	Mich.	
1227	11	Hil.	
		East.	
		Trin.	Pateshull, Multon, Heydon, R. Lexington.
	11—12	Mich.	
1228	12	Hil.	Pateshull, Camvill, William de L'Isle, Richard Ducket.
		East.	Pateshull, Segrave, William Fitz Warin, William de L'Isle, [H. de Burgh], [John Marshall].
		Trin.	
	12—13	Mich.	Pateshull, Multon, Segrave, R. Lexington, Camvill, William of London.
1229	13	Hil.	[Pateshull], Multon, Segrave, R. Lexington, Camvill.
		East.	Multon, Segrave, [W. Raleigh], R. Lexington, Camvill.
		Trin.	

A.D.	A.R.	TERM.	
	13—14	Mich.	Multon, Segrave, Raleigh, R. Lexington, W. de L'Isle, London, Rob. Shardelowe.
1230	14	Hil.	Multon, Segrave, Raleigh, R. Lexington, London, W. de L'Isle, Shardelowe, Ric. Reinger.
		East.	Multon, Segrave, Raleigh, R. Lexington, London, W. de L'Isle, Shardelowe.
		Trin.	Multon, Raleigh, R. Lexington, London, Shardelowe, Ralph of Norwich.
	14—15	Mich.	Multon, Raleigh, R. Lexington, W. de L'Isle, London, Shardelowe, Reinger, Norwich.
1231	15	Hil.	The same.
		East.	The same [with William of York].
		Trin.	Multon, Raleigh, York, Norwich, [Reinger].
	15—16	Mich.	Multon, Raleigh, R. Lexington, York, Shardelowe, Norwich.
1232	16	Hil.	[Multon], [Segrave], [Raleigh], R. Lexington, York, Shardelowe, Norwich, Adam Fitz William.
		East.	Multon, Raleigh, R. Lexington, York, Shardelowe, Norwich, Fitz William.
		Trin.	
	16—17	Mich.	Multon, Raleigh, R. Lexington, York, Norwich, W. de L'Isle, Fitz William.
1233	17	Hil.	Multon, [Raleigh], R. Lexington, York, Norwich, Fitz William.
		East.	Multon, R. Lexington, York, Norwich.
		Trin.	[Multon], [Raleigh], R. Lexington, York, Norwich, Fitz William, Will. of St Edmunds.
	17—18	Mich.	Raleigh, [Multon], R. Lexington, York, Norwich, W. de L'Isle, Fitz William, St Edmunds.
1234	18	Hil.	Raleigh, Multon, R. Lexington, York, Norwich, W. de L'Isle, Fitz William, St Edmunds.
		East.	[Raleigh], R. Lexington, York, Norwich, W. de L'Isle, Fitz William, St Edmunds.
		Trin.	R. Lexington, York, Norwich, W. de L'Isle, Fitz William.
	18—19	Mich.	
1235	19	Hil.	
		East.	
		Trin.	
	19—20	Mich.	Multon, William of Culeworth, John of Kirkby.
1236	20	Hil.	
		East.	Multon, Fitz William, Culeworth, Kirkby.
		Trin.	The same.
	20—21	Mich.	R. Lexington, Fitz William, Culeworth, St Edmunds.
1237	21	Hil.	R. Lexington, [York], Norwich, Fitz William, Culeworth, [Kirkby], St Edmunds.

A.D.	A.R.	Term.	
		East.	R. Lexington, York, Fitz William, Culeworth.
		Trin.	The same.
	21—22	Mich.	The same.
1238	22	Hil.	The same.
		East.	The same.
		Trin.	R. Lexington, Culeworth, Hugh Giffard, Henry of Bath.
	22—23	Mich.	R. Lexington, York, Culeworth, Bath.
1239	23	Hil.	The same.
		East.	The same.
		Trin.	The same.
	23—24	Mich.	The same.
1240	24	Hil.	
		East.	
		Trin.	
	24—25	Mich.	
1241	25	Hil.	
		East.	
		Trin.	
	25—26	Mich.	
1242	26	Hil.	R. Lexington, Culeworth, Gilbert Preston, [Jollan Neville, R. Beauchamp].
		East.	R. Lexington, Culeworth, Preston, Neville.
		Trin.	R. Lexington, [Culeworth], [Roger Thurkelby], Neville.
	26—27	Mich.	Neville, R. Lexington, Thurkelby, Preston.
1243	27	Hil.	R. Lexington, Neville, Rob. Esseburn.
		East.	R. Lexington, Thurkelby, Neville, Preston.
		Trin.	The same.
	27—28	Mich.	The same.
1244	28	Hil.	R. Lexington, York, Thurkelby, Neville, Preston.
		East.	Thurkelby, Neville, John of Cobham.
		Trin.	[R. Lexington], Neville, J. Cobham.
	28—29	Mich.	[R. Lexington], Thurkelby, Neville, Preston, Robert of Notingham, J. Cobham.
1245	29	Hil.	Bath, Thurkelby, Notingham, Neville, Preston, J. Cobham.
		East.	Notingham, J. Cobham, Will. of St Edmunds, Rob. Shardelowe.
		Trin.	The same.
	29—30	Mich.	Bath, Thurkelby, Notingham, Neville, Preston, Shardelowe, J. Cobham.
1246	30	Hil.	[Bath], Thurkelby, Notingham, Neville, Preston, J. Cobham.
		East.	Bath, Notingham, Neville, [Alan of Watsand].
		Trin.	Bath, Neville, Watsand.
	30—31	Mich.	Bath, Watsand.

A.D.	A.R.	TERM.	
1247	31	Hil.	The same.
		East.	The same.
		Trin.	Bath, Watsand, William of Wilton.
	31—32	Mich.	
1248	32	Hil.	
		East.	
		Trin.	
	32—33	Mich.	
1249	33	Hil.	
		East.	
		Trin.	
	33—34	Mich.	[Bath], Thurkelby, [Preston], Cobham, Watsand, Wilton.
1250	34	Hil.	Thurkelby, John of Gatesden, Preston, Cobham Watsand, Wilton.
		East.	Thurkelby, Cobham, Watsand, Robert Bruce.
		Trin.	Thurkelby, Bruce, Cobham, Watsand.
	34—35	Mich.	Thurkelby, Cobham, Watsand.
1251	35	Hil.	The same.
		East.	Thurkelby, Watsand, Cobham.
		Trin.	Thurkelby, Watsand.
	35—36	Mich.	[Henry de la Mare], Simon of Walton, Watsand, [Giles of Erdington].
1252	36	Hil.	Walton, Watsand, Erdington.
		East.	The same.
		Trin.	The same.
	36—37	Mich.	Thurkelby, Watsand, Erdington, William Trussel.
1253	37	Hil.	The same.
		East.	The same.
		Trin.	The same.
	37—38	Mich.	Thurkelby, Preston, Walton, Watsand, Erdington. Trussel.
1254	38	Hil.	The same.
		East.	The same.
		Trin.	The same.
	38—39	Mich.	Thurkelby, [Preston], [Walton], Watsand, Erdington, [Trussel], [Roger of Whitchester].
1255	39	Hil.	Thurkelby, Watsand, Erdington.
		East.	Thurkelby, Preston, Watsand, Whitchester, [Trussel].
		Trin.	Thurkelby, Watsand.
	39—40	Mich.	The same.
1256	40	Hil.	Thurkelby, John of Wyville.
		East.	Walton, Robert of Shotingdon.
		Trin.	[Bath], Walton, Shotingdon, John of Cokefield.
	40—41	Mich.	Bath, Walton, Shotingdon, Cokefield.
1257	41	Hil.	The same.

A.D.	A.R.	Term.	
		East.	Bath, Walton, Shotingdon, Bruce.
		Trin.	The same.
	41—42	Mich.	Bath, Bruce.
1258	42	Hil.	Bath, Bruce, Nicholas de Handlo.
		East.	Bruce, Handlo.
		Trin.	The same.
	42—43	Mich.	Thurkelby, Preston, Handlo.
1259	43	Hil.	Thurkelby, Preston, Wyville.
		East.	The same.
		Trin.	The same.
	43—44	Mich.	The same.
1260	44	Hil.	Thurkelby, Preston, Wyville, John de Cave.
		East.	The same.
		Trin.	[Thurkelby], Preston, Wyville, Cave.
	44—45	Mich.	Preston, Wyville, Cave.
1261	45	Hil.	Wyville, Cave.
		East.	The same.
		Trin.	The same.
	45—46	Mich.	Preston, Wyville.
1262	46	Hil.	The same.
		East.	
		Trin.	The same.
	46—47	Mich.	The same.
1263	47	Hil.	The same.
		East.	The same.
		Trin.	The same.
	47—48	Mich.	Preston, [Wyville], [Nicholas de Turri].
1264	48	Hil.	
		East.	
		Trin.	
	48—49	Mich.	Preston, de Turri, Hervey of Borham, William Bonquer.
1265	49	Hil.	The same.
		East.	The same.
		Trin.	The same.
	49—50	Mich.	Preston, Bonquer.
1266	50	Hil.	Preston, Walter Berstead.
		East.	Preston, John de la Lynde, Walter Berstead.
		Trin.	Preston, de la Lynde, [Berstead].
	50—51	Mich.	Preston, Bonquer, de la Lynde.
1267	51	Hil.	Preston, Adam de Greinvill.
		East.	
		Trin.	Preston, Roger Messenden.
	51—52	Mich.	The same.
1268	52	Hil.	Martin Littlebury, Roger Seyton, John of Cobham (the younger).
		East.	

A.D.	A.R.	TERM.	
		Trin.	The same.
	52—53	Mich.	The same.
1269	53	Hil.	The same.
		East.	The same.
		Trin.	The same.
	53—54	Mich.	The same.
1270	54	Hil.	The same.
		East.	The same.
		Trin.	The same.
	54—55	Mich.	Littlebury, Seyton.
1271	55	Hil.	Littlebury, Seyton, Cobham.
		East.	Littlebury, Stephen Heym, Robert Fulcon.
		Trin.	The same.
	55—56	Mich.	The same.
1272	56	Hil.	The same.
		East.	The same.
		Trin.	The same.
	56—57	Mich.	The same.

TABLE THE SECOND.

TABLE SHOWING BRACTON'S CITATIONS IN CHRONOLOGICAL ORDER.

NOTE: The object of the following table is to show (1) what cases Bracton cites, (2) whether they are in the Note Book, (3) whether there is any extant roll on which they are or ought to be found. The citations are arranged in four classes,

A. Pleas in the Bench.
B. Pleas which followed the King.
C. Pleas in the Eyres.
D. Undated or otherwise imperfectly cited cases.

The numbers in the first column refer to the folios of Bracton's Treatise; those in the last column to the Cases in the Note Book.

A.

PLEAS IN THE BENCH.

1217, A.R. 1—2, *Michaelmas Term to* 1219, A.R. 3, *Hilary Term inclusive*[1].

Cases in Note Book 1295—1359 (which are from Mich. A.R. 1—2) and 1—15 (which are of uncertain date but probably from Trinity A.R. 2).
No Rolls extant.

f. 77.	Essex. H. de Abecot. in rotulo de primis placitis post guerram.	
f. 376 b.	Bucks. Wilhelmus de Abruncis et Matilda uxor eius. inter prima placita post guerram.	12
f. 239.	Anon. Essoins. de term. S. Mich. A.R. 2.	

[1] All cases from this period are placed in one class as, owing to the loss of Rolls and of the Note Book's first page, it is in some instances difficult to fix the exact date, see above p. 73.

f. 313.	Kent.	Anon. Dower in gavelkind.	9 and 1338
		de term. S. Mich. A.R. 2 post guerram.	
f. 308 b.		Isabella de Gravenel, Thomas de Wederhal.	9 and 1338
		coram Martino in banco A.R. 2.	
f. 376 b.	Essex.	Matilda de Say, Wilhelmus de Maundevill.	8
		de term. S. Mich. A.R. 2 post guerram.	
f. 302.	Sussex.	Maria de Cromesham.	Trinity A.R. 2 the second roll after the war.
f. 314 b.	Dors.	Hamo de Halmodoston.	
f. 378.	Kent.	Abbas de Nutlegh.	
f. 378 b.	Kent.	Magister Militiae Templi.	
f. 380.	Wilt.	Galfridus de Chessewicke.	
f. 239.	Somers.	Wilhelm Bukker, Prior S. Nicholai Exon.	5
		de term. S. Trin. A.R. 2.	
f. 409.	Kent.	Matilda filia Simonis.	See 11
		de term. S. Mich. A.R. 2 incip. 3.	
f. 27 b.		Magister Militiae Templi.	Cases of A.R. 3, reserved from the eyre for judgment.
f. 219.	Glouc.	Richardus Curpet, W. Comes Marshal junior.	
f. 277 b and 421.	Dors.	Hamelinus filius Radulphi[1].	
f. 433.	Kent.	W. Comes Marescallus, Falcasius de Breyaute.	

1219, A.R. 3. *Easter and Trinity Terms.*

Cases in Note Book 16—44.
No roll extant.

f. 65.	Sussex.	si Radulphus de la Roche.	44
f. 113.	Ebor.	si Wilhelmus le Seneschal.	37
f. 280.	Sussex.	si Radulphus de Rupe, Gilebertus de Aquila.	44
f. 301 b.	Bucks.	Alicia quae fuit uxor Symonis de Stentenham.	
f. 330.	Surrey.	Gylbertus de Albyngeworth, Reginaldus de Brewese.	40
f. 375 b.		Anon. circa finem rotuli. Count begins with one who was never seised.	
f. 442 b.		Anon. Bailiff of franchise amerced.	20 and 28

1219, A.R. 3—4. *Michaelmas Term.*

Cases in Note Book 45—79, and Appendix to vol. III.
Two Rolls extant. A = Coram Rege Roll No. 2.
B = Coram Rege Roll No. 1.

f. 23.	Bedf.	Richardus le Hare.	61
f. 50.		Anon. Donor and donee in possession together.	
f. 199 b.	Sussex.	Johannes de Monte Acuto, Martinus de Bestenouere.	70

[1] See Case 1411 and Appendix to vol. 3, Case 8.

f. 243 b.	Norf.	Thomas Bardolf.	49
f. 248 b—9.	Oxf.	Robertus de Harpdene, Reginaldus de Albo Monasterio.	68
f. 258 b.	Essex.	si Brianus pater Henrici.	47
f. 310.	Surrey.	Margeria de Bellanallie.	
f. 316.	Norf.	Thomas de le Enueyse.	56
f. 336.	Surrey.	Robertus de Basings.	10
f. 372.		Anon. Default by both demandant and tenant.	
f. 424 b.	Sussex.	Johannes de Bruse, Reginaldus de Bruse.	46
f. 437.	Sussex.	si Matilda amita Rogeri de Barlegh.	
f. 440 b.		Anon. Mesne process in personal action.	Appendix to vol. III., case 2

1220, A.R. 4. *Hilary and Easter Terms.*

Cases in Note Book 80—124.
Two Rolls extant. A = Coram Rege Roll No. 3.
B = Coram Rege Roll No. 5.

f. 151 b.	Essex.	Elyas Pigon.	
f. 199 b.	Sussex.	Johannes de Monte Acuto, Martinus de Bestenouere.	88
f. 200.	Sussex.	Martinus de Bestenouere (warranty by a villein).	
f. 393.		Anon. (circa finem). Doweress can not sue or be sued without her warrantor.	109
f. 433.		W. Comes Marescallus.	102

1220, A.R. 4. *Trinity Term.*

Cases in Note Book 1360—1474.
Two Rolls extant. A = Coram Rege Roll No. 6.
B = Coram Rege Roll No. 7.

f. 53 and 53 b.	Lincoln.	Ecclesia de Wichine, Prior de Markeby.	1418
f. 93.	Northam.	Theobaldus de Lassel.	96
f. 200.	Dorset.	Hamelinus filius Radulphi.	1411
f. 241 b.	Worc.	Ecclesia de Eldersen, Robertus de Bradelegh.	1428
f. 305 b.	Suff.	Alexandria.	1392
f. 312.	Norf.	Isolda quae fuit uxor W.	83
f. 319.	York.	Petrus de Malo Lacu, Prior de S. Oswaldo.	
f. 375.	Wilts.	W. de Lusteshille, W. de Coneleffend.	1360
f. 377 b.		Anon. View after default.	1436
f. 387.		Isaac Judeus de Northwico.	1376
f. 414.	Midd.	Hamond le Brood.	
f. 430 b.	Somers.	Anon. Coparceners to be joined. Bastardy.	
f. 430 b.	Hants.	Johannes de Brywes.	
f. 433.	Bedf.	W. Comes Marescallus.	See 102
f. 433 b.	Bucks.	Hugo de Gurnay.	1465
f. 436 b.	Glouc.	Robertus Cusin.	1427
f. 437 b.	Midd.	si Robertus Cocus.	

1220, A.R. 4—5. *Michaelmas Term.*

Cases in Note Book 300—325.
Two Rolls extant. A = Coram Rege Roll No. 9.
B = Coram Rege Roll No. 8.

f. 63 b.	Lincoln.	Bartholomeus filius Richardi.	303
f. 65 b.	Lincoln.	Ozbertus filius Richardi.	303
f. 146.	Suff.	de Rogero de Kerken et haerede de Ver.	
f. 367.	Bucks.	Johannes filius Rolandi.	307
f. 387.		Anon. Default by tenant who has vouched.	
f. 413 b.		Radulphus Harang.	
f. 432 b.		Anon. Alienation by tenant after summons.	

1221, A.R. 5. *Hilary and Easter Terms.*

Cases in Note Book 1475—1554.
Two Rolls extant. A = Coram Rege Roll No. 14.
B = Coram Rege Roll No. 11.

f. 69.	Norf.	Petrus Constabularius de Manton.	1503
f. 153.	York.	Robertus filius Johannis (in principio rotuli).	See 1517
f. 375 b.		Anon. Omission to name in count a person having equal or greater right.	
f. 433.	York.	Petrus de Malo Lacu.	

1221, A.R. 5. *Trinity Term*[1].

No cases in Note Book.
No roll extant.

f. 286. Gerardus de Huwell, Richardus rector de Claypoll.

1221, A.R. 5—6. *Michaelmas Term.*

No cases in Note Book.
Roll extant. Coram Rege Roll No. 12.
Bracton cites no cases.

1221 *or* 1222, A.R. 6. *Michaelmas Term.*

Bracton cites from Mich. A.R. 6 the following, leaving it uncertain whether he means Mich. A.R. 5—6, or Mich. A.R. 6—7.

f. 245.	Herford.	Prior de Lantony, Walterus Byseche.
f. 245 b.		Anon. Ass. dar. pres. Gift of advowson by tenant by curtesy.

[1] I have not observed any fines for this term; Pateshull began an eyre in the western counties on the morrow of Trinity.

f. 350.	Devon.	Matilda de Curtney.	Cases among the essoins.
f. 350.	Sussex.	Galfridus de Lucy.	
f. 350.	Sussex.	Prior de Blibing.	
f. 350.	Glouc.	Robertus Toniguy.	
f. 350.	Sussex.	Philippus de Redham.	
f. 350 b.	Noting.	Emma de Bella Fago.	

1221—2, A.R. 6. *No term mentioned.*

f. 351.	Gilbertus Marescallus, Alanus de Hyda.	1611

1222, A.R. 6. *Hilary Term.*

Cases in Note Book 125—171.
No Roll extant.

f. 53 b.	Staff.	Raul. Comes Cestriae, Prior de Kenelwyde.	See 199
f. 83.	Dors.	Alanus de S. Georgio.	168
f. 246 b.	Staff.	Rayn. Comes Cestriae, Prior de Kenelworth.	See 199
f. 259 b.	Midd.	si Aluricus Huse. Matilda de Albo Monasterio.	See 59 and 1559
f. 364.	Bucks.	Alicia de Iarpmille, Petrus de Imnere.	
f. 407.	Warw.	Precentor Lincolniae.	152
f. 407 b.	North.	Radulphus persona de Irclinbourghe.	162

1222, A.R. 6. *Easter Term.*

Cases in Note Book 172—184.
No Roll extant.
Bracton cites no cases.

1222, A.R. 6. *Trinity Term.*

Cases in Note Book 185—214.
Roll extant. B = Coram Rege Roll No. 15.
Bracton cites no cases.

1222, A.R. 6—7. *Mickaelmas Term.*

Cases in Note Book 1555—1570.
No Roll extant.

f. 143.	Anon. Appeal of rape.	
f. 259 b.	si Aluricus Huse, Matillis de Albo Monasterio.	1559, see also 59
f. 420 b.	Anon. Inquest as to villein tenure after death of tenant.	

1222—3, A.R. 7. *No term mentioned.*

f. 306 b.	Gunora uxor Johannis filii Hugonis, Matilda de Berneres.	1573
f. 351 b.	Anon. Essoins of barons.	1637

1223, A.R. 7. *Hilary Term.*

Cases in Note Book 1571—1606.
Roll extant. B = Coram Rege Roll No. 16.

f. 141 b.	Norf.	Durandus Scissor, Henricus de Ver.	1597
f. 349.		Vitalis Engayne, Ecclesia de Ho.	
f. 375 b.		Anon. Ancestor entering religion.	
f. 376.	Camb.	Alanus de Bassingborne, Robertus de Insula.	1578
f. 407.	Bedf.	Gylbertus persona de Denham.	
f. 437.	Linc.	W. de Fountygne.	
f. 437 b.	Linc.	Simon de Hale.	

1223, A.R. 7. *Easter Term.*

Cases in Note Book 1607—1618.
No Roll extant.

f. 55 b.	Bedf.	Falkz de Briante, Prior de Nywenham.	1607
f. 82.	Heref.	Wilhelmus filius Benedicti, Galfridus de Luci.	
f. 93.	Somers.	Emma uxor Wilhelmi Daci.	
f. 244.	Bedf.	Falcanus de Briante, Prior de Neneham.	1607
f. 320 b.	Buck.	Guido de Wyndeslore.	
f. 320 b.	Kent.	Alicia uxor Richardi.	
f. 392 b.	Devon.	Wylhelmus Paynel, Abbas de Doneckswell.	
f. 433 b.	Sussex.	Nicholaa uxor Thomae de Casteneys.	1609

1223, A.R. 7. *Trinity Term.*

No cases in Note Book.
No Roll extant.

f. 97 b.	Essex.	Idonea.
f. 432 b.	Oxf.	Jocetus de Plungenay.

1223, A.R. 7—8. *Michaelmas Term.*

Cases in Note Book 1619—1662.
Roll extant. A = Coram Rege Roll No. 17.

f. 12.		Anon. A leper cannot grant.	1648
f. 85 b.	York.	Anon. No relief, marriage, or wardship in socage land.	
f. 230 b.		Anon. Quo Jure. Common; right to enclose.	1624
f. 311.		Thomas de Nassendene.	1644
f. 349.		Vitalis Engayne.	1634
f. 349 b.	Sussex.	Alanus de S. Georgio.	Essoin Cases.
f. 350 b.	North.	Henry de Gayton.	Essoin Cases.
f. 350 b.	Devon.	Alicia Malet.	Essoin Cases.
f. 350 b.	Buck.	Hugo de Broke.	Essoin Cases.
f. 350 b.	Lanc.	Alicia de Lanc, W. de Taham.	Essoin Cases.

1223—4, A.R. 8. *No term mentioned.*

f. 306 b.		Agnes uxor Roberti de Hactone.	1564

1224, A.R. 8. *Hilary Term.*

Cases in Note Book 214—240.
No Roll extant.

f. 29.	Noting.	Robertus de Walingh.	224
f. 326 b.	Linc.	Thomas de Estotengni.	234
f. 387.	Berks.	Henry de Queynt.	235
f. 390 b.		Anon. Departure in pleading.	1627
f. 398.	Norf.	Radulphus de Lerlinge, Prior de Thefford.	222
f. 414.	Heref.	Richardus filius Godfrey.	227

1224, A.R. 8. *Easter Term.*

Cases in Note Book 944—985.
No Roll extant.

f. 75.	Wilt.	Thomas de Gymeges.	
f. 246.	Kent.	Prior de Suthworth, Warin de Monte Kas. Ecclesia de Snanthanis.	983
f. 298.	Berks.	Gunora uxor J. filii H., Matilda de B.	See 1120, 1176, 1573

1224, A.R. 8. *Trinity Term.*

Cases in Note Book 986—1031.
No Roll extant.

f. 392 b.		Anon. Voucher of heir.	
f. 392 b.		Hugo de Bailol.	432

1224, A.R. 8—9. *Michaelmas Term.*

Cases in Note Book 889—943.
Two Rolls extant. A = Tower Roll No. 2.
B = Coram Rege Roll No. 18.

f. 54 b.	Bedf.	Johannes de Trahills, Prior de Niwenham.	
f. 212.	York.	si Rogerus Clericus.	907
f. 246.	Bedf.	Johannes de Traylie, Prior de Neueham.	
f. 298.	Warw.	Johannes de Marr, W. de Cantulupo.	904
f. 304.	Hertf.	Alicia uxor Rogeri de Camera.	891

1225, A.R. 9. *Hilary Term.*

Cases in Note Book 1032—1067.
Roll extant. B = Coram Rege Roll No. 22.

f. 53 b.	Norf.	Abbas de Messendene, Hubertus de Burgo.	1064
f. 244.	Linc.	Prior de Osneby, Conanus de Weleton.	1035

f. 246.	Norf.	Walterus Abbas de Messendene, Hubertus de Burgo.	1064
f. 304 b.	Devon.	Alicia uxor W. de Thornton.	1065
f. 304 b.	North.	Wilhelmus de Dauentre.	1067
f. 374.	Berks.	Reginaldus Morin.	1034
f. 434.	Derby.	Rogerus de Drayton.	1055
f. 434.	Warw.	Robertus de Cherleton.	

1225, A.R. 9. *Easter Term.*

Cases in Note Book 1069—1105.
No Roll extant.

f. 53 b.	Corn.	Richardus de Wyks, Prior de Triwardray.	1070
f. 142 b.	Essex.	Hugo de Godingham, Hugo de Cantilupo.	See 943
f. 244.	Norf.	Matilda de Rochesford, Robertus de Tunston.	1072
f. 246 b.	Cumb.	Richardus Wyke, Prior de Trywardray.	1070
f. 316.	Norf.	Margeria de Raylie.	
f. 332 b.	Hunt.	Wilhelmus Hatechrist.	1079
f. 364.	Bucks.	Henry de S. Warerico.	
f. 390.	Midd.	Juliana, Henricus, W. filius Herewardi.	

1225, A.R. 9. *Trinity Term.*

Cases in Note Book 703—724.
Two Rolls extant. A = Coram Rege Roll No. 20.
B = Coram Rege Roll No. 21.

f. 436.	Midd.	Henry de Haquebut.	716

1225, A.R. 9—10. *Michaelmas Term.*

Cases in Note Book 1663—1691.
Three Rolls extant. A = Coram Rege Roll No. 19.
B = Coram Rege Roll No. 23.
C = Tower Roll No. 3.

f. 54 b.		Prior de Lewes, Adam de Novo Mercato.	1685
f. 83.	Kent.	Isabella de Hotot.	
f. 85.	Staff.	Margareta Baggod, Rogerus la Zusche.	See 1043
f. 116 b.	Hertf.	Henricus de Romband.	1691
f. 137.	Kent.	Adam de Burgh.	
f. 141.	Hertf.	Henricus de Romband.	1691
f. 146.	Worc.	Thomas de Rupe.	1664
f. 160 b.	Norf. Suff.	Simon de Rakfeld.	
f. 246 b.	York.	Prior de Lewes, Adam de Novo Mercato.	1685
f. 296 b.		Alexander de Walpole, Johannes filius Roberti.	1668
f. 301 b.	Essex.	Asselina uxor Alani.	
f. 304.	Oxf.	Alicia uxor Jacobi de Cardevile.	1669
f. 312.	Northam.	Margeria uxor Henry de Northon.	

f. 344.	Camb.	Abbas de Haynsham.	1672
f. 346.	Suff.	Salomon de S. Edmundo, Oliva filia Andreae.	
f. 355.	Warw.	Rogerus de Leualande, Richardus de Gloc.	
f. 388 b.	Kent.	Bosia uxor Roberti de Goldingford.	
f. 407.	York.	Richardus persona de Mapeldon.	1671

1226—7, A.R. 10. *No term mentioned.*

f. 306.		Juliana uxor Thomae Fughelstone.	1703

1226, A.R. 10. *Hilary Term.*

Cases in Note Book 1692—1730.
Roll extant. B = Coram Rege Roll No. 24.

f. 423 b.	Kent.	Prior de Merton, Nigellus de Mumbrey.
f. 423 b.	York.	W. de Carleton, R. de Percy.
f. 430.	York. Linc.	Adam Tusset.
f. 433 b.	Bedf.	Richardus de Bavadum.
f. 440.	York.	Nicholaus de Statevil.

1226, A.R. 10. *Easter Term.*

Cases in Note Book 1731—1763.
Roll extant. B = Coram Rege Roll No. 25.

f. 54 b.	Leic.	Walterus de Rideware, Prior de Undeleigh.	1758
f. 246.	Norf.	Simon de Nodarum, Ecclesia de Judlibam.	1762
f. 246 b.	Leic.	Walterus de Kedware, Prior de Sudleghe.	1758

1226, A.R. 10. *Trinity Term*[1].

No cases in Note Book.
No Roll extant.
Bracton cites no cases.

1226, A.R. 10—11. *Michaelmas Term*[1].

No cases in Note Book.
No Roll extant.
Bracton cites no cases.

1227, A.R. 11. *Hilary Term*[1].

No cases in Note Book.
No Roll extant.
Bracton cites no cases.

[1] I have found no fines in the Bench of these terms. A great eyre was going on.

1227, A.R. 11. *Easter Term.*

Cases in Note Book 241—258.
Roll extant. B = Coram Rege Roll No. 27.

f. 63 b.	Sussex.	Johannes de Monte Acuto.	247

1227, A.R. 11. *Trinity Term.*

Cases in Note Book 259—268.
Roll extant. B = Coram Rege Roll No. 27.

f. 421.	Heref.	Agnes uxor Johannis de Westwickham.	

1227, A.R. 11—12. *Michaelmas Term.*

No cases in Note Book.
No Roll extant.
Bracton cites no cases.

1228, A.R. 12. *Hilary and Easter Terms.*

Cases in Note Book 269—287.
No Roll extant.

f. 92 b.	Linc.	Idonea uxor Nicholai Burdeth.	279
f. 200.	Warw.	Wilhelmus de Bissopeston.	281
f. 288.		Anon. Assisa utrum duae virgatae.	285
f. 398.	Hunt.	Egidius de Merck.	286
f. 413.	Berks.	Henricus de Siccario.	
f. 418.	Berks.	Robertus Hachard.	287

1228, A.R. 12. *Trinity Term.*

No cases in Note Book.
No Roll extant.
Bracton cites no cases[1].

1228, A.R. 12—13. *Michaelmas Term.*

Cases in Note Book 288—299.
Two Rolls extant. B = Coram Rege Roll No. 29.
C = Coram Rege Roll No. 35.

f. 260.	Hants.	si Robertus filius Cihul.	

[1] The case on f. 226 apparently of this term belongs to Trin. A.R. 13.

1229, A.R. 13. *Hilary Term.*

Cases in Note Book 311—325.
Roll extant. A = Coram Rege Roll No. 34.

f. 346.	Devon.	Thomas de Tyndland.	

1229, A.R. 13. *Easter Term.*

Cases in Note Book 326—333.
Two Rolls extant. B = Coram Rege Roll No. 31.
C = Coram Rege Roll No. 32.

f. 225 b.	Noting.	Radulphus filius Petri.	

1229, A.R. 13. *Trinity Term and Middlesex Eyre of William Raleigh.*

Cases in Note Book 334—347.
No Roll extant.

f. 95 b.	Midd.	si Johannes Blundus.	
f. 177 b.	Midd.	si Johannes Calbus.	339
f. 200.	Midd.	Anon. Various classes of tenants distinguished.	
f. 200.	Midd.	si Godefridus.	343
f. 226.	Midd.	si Stephanus Archiep. Cantuar.	336
f. 348.	Midd.	Anon. Writ not returned.	

1229, A.R. 13—14. *Michaelmas Term.*

Cases in Note Book 348—374.
No Roll extant.

f. 27 b.		Anon. Gift first to one, then to another; warranty.	
f. 226 b.		Abbas de Ramseghe.	360
f. 315.		Anon. Admeasurement of dower.	365
f. 388 b.	Hertf.	B. uxor R. Russel.	

1230, A.R. 14. *Hilary Term.*

Cases in Note Book 375—394.
Roll extant. A = Coram Rege Roll No. 33.

f. 93.	Northamp.	Christiana uxor Walteri.	377
f. 243 b.	Suff.	Maria de Walenus, Herbertus de Alezini.	380
f. 391.		si Galfridus pater Gilberti.	387
f. 398.		Rogerus de Danudeser et Matilda uxor eius.	375
f. 418.	Midd.	Abbas S. Albani, Willelmus filius Radulphi.	394

1230, A.R. 14. *Easter Term.*

Cases in Note Book 395—408.
No Roll extant.

f. 319.	Wilts.	Radulphus de Moigne.	402
f. 320.	Dors.	Matilda uxor Stephani de Bosco.	
f. 350.		Anon. Essoin in action on a fine.	
f. 355 b.		Anon. Essoin; view; licence to rise.	404
f. 356 b.	Noting. Linc.	W. Thesaurarius Eborum, Wilhelmus de Camera.	405
f. 369 b.		Paulinus de Wychelesse, Stephanus de Fredewylle.	397
f. 375.	Hunt.	W. Archidiaconus Wellensis.	411
f. 384.		Anon. Warranty; value of land, how ascertained.	

1230, A.R. 14. *Trinity Term.*

Cases in Note Book 409—429.
Roll extant. A = Coram Rege Roll No. 36.

f. 301.	Norf.	Letitia de Eggefend.	
f. 339 b.	Suff.	Ecclesia de Trillaw.	427
f. 356.	Norf.	Prior de Longa Villa.	420
f. 415.	Surrey.	Prior de Novo Loco.	416
f. 437.	Norf.	Richard Angod.	

1230, A.R. 14—15. *Michaelmas Term.*

Cases in Note Book 430—480.
Roll extant. A = Coram Rege Roll No. 37.

f. 130.	Kent.	Wilhelmus Musard.	462
f. 250.	Derby.	Ecclesia de Eltdene.	480
f. 297 b.	Warw.	Johannes filius Elfridi.	
f. 297 b.	Kent.	Ernaldus de Camerin.	
f. 312.	Suff. Essex.	Emma uxor Rogeri filii Swani.	
f. 379 b.		Anon. Dispute as to how much land put in view.	456
f. 407 b.	Suff.	Hugo de Monte Causo.	442
f. 421.	Salop.	Fulco filius W.	
f. 430.	Essex.	Assisa utrum, J. persona de Messe, Radulphus de Ardern.	

1231, A.R. 15. *Hilary Term.*

Cases in Note Book 481—514.
No Roll extant.

f. 302.	Derby.	Agnes uxor Nicholai.	
f. 374.	Bucks.	Walterus de Bosco.	
f. 391 b.	Berks.	Prior de Bradley, Wilhelmus de Cyfrewast.	512
f. 423.	North.	W. de Lungesper et Idonea uxor eius.	503

1231, A.R. 15. *Easter Term.*

Cases in Note Book 515—568.
No Roll extant.

f. 93.	Camb.	Anon. Dower in socage.	623
f. 230 b.	Buck.	Anon. Common pur cause de vicinage.	561
f. 286 b.	Sussex.	Prior de Lewes, Gylbertus de Aquila.	539
f. 302.	Surrey.	Joetta de la Strode.	
f. 407.	Somers.	Richardus persona de Hideford.	547
f. 407 b.	Essex.	Gervasius de Aldermanbury.	550

1231, A.R. 15. *Trinity Term.*

Cases in Note Book 569—623.
Roll extant. B = Coram Rege Roll No. 38.

f. 316 b.	Bedf.	Petrus de Peyiure.	607
f. 351 b.	Worc.	Adam de Thornmarton.	609
f. 407 b.	Oxford.	Prior de Berncestre.	570
f. 436.	Hunt.	Guldeburga.	

1231, A.R. 15—16. *Michaelmas Term.*

Cases in Note Book 624—666.
No Roll extant.

f. 15.	Berks.	Robertus de Burneby.	635
f. 22.	Salop.	Rogerus de la Suche, Petronilla de Wyneslogh.	664
f. 29.	Linc.	si Helewisa.	659
f. 303.	Hants.	Aldithia.	647
f. 343.	Camb.	Osbertus.	663
f. 346.	Midd.	Gylbertus de Hendon.	
f. 361 b.	Salop.	Anon. Knights sent to essoinee.	651
f. 422 b.	Suff.	Alicia uxor Lucae Brokenhed.	

1232, A.R. 16. *Hilary Term.*

No Cases in Note Book.
No Roll extant.

f. 342 b.		Johannes de Karum.	

1232, A.R. 16. *Easter Term.*

Cases in Note Book 667—702.
No Roll extant.

f. 346.	Norf.	Galfridus filius Baldwini.	
f. 367.	Oxf.	Fray Pinchard.	683

f. 382.	Midd.	Alicia de Warr, R. de Renge.	748
f. 392 b.	Kent.	Alicia de Bendenges.	
f. 392 b.	Linc.	Richardus de Elings.	
f. 407 b.	Hants.	Engelardus de Cygoiny.	684
f. 408.	Devon.	Thomas de Buttyler, Alfridus de Cottone.	678

1232, A.R. 16. *Trinity Term*[1].

No cases in Note Book.
No Roll extant.
Bracton cites no cases.

1232, A.R. 16—17. *Michaelmas Term.*

Cases in Note Book 858—888.
Roll extant. B = Coram Rege Roll No. 39.

f. 50.	Suff.	Wilhelmus de Fraxino.	871
f. 305 b.	Salop.	Emma.	737
f. 341.	Essex.	Etho filius Wilhelmi.	887
f. 342 b.		J. Bathoniensis Episcopus.	866
f. 387.	Midd.	W. de Raleigh, Johannes Pigon.	886
f. 422 b.	Suff.	Juliana uxor Alani de Gyseham.	884
f. 433.		Anon. Plea of non-tenure; coparceners.	

1233, A.R. 17. *Hilary Term.*

Cases in Note Book 725—759.
No Roll extant.

f. 87 b.	Kent.	Warinus de Monte Caniso, Robertus de Hucham.	743
f. 298.	Linc.	Eudo de Calethorpe.	730

1233, A.R. 17. *Easter Term.*

No Cases in Note Book.
No Roll extant.
Bracton cites no cases.

1233, A.R. 17. *Trinity Term.*

Cases in Note Book 760—783.
No Roll extant.

f. 29.	Norf.	Petronilla uxor Wilhelmi de S. Martino.	777
f. 260.	Bucks.	si Rogerus de Estwicham.	

[1] I have seen no fines of this term.

1233, A.R. 17—18. *Michaelmas Term.*

Cases in Note Book 784—825.
Roll extant. A = Coram Rege Roll No. 40.

1234, A.R. 18. *Hilary Term.*

Cases in Note Book 826—843.
No Roll extant.

1234, A.R. 18. *Easter Term.*

Cases in Note Book 844—857.
No Roll extant.

f. 230 b. Sussex. Simon de la Pynd, Johannes de Kynelworth.

Later Case. A.R. 38.

f. 339 b. Kent. Archiep. Cantuar, Robertus de S. Johanne.

B.

PLEAS WHICH FOLLOWED THE KING[1].

1234—5, A.R. 18—19.

Cases in Note Book 1106—1132.
Roll extant. A = Tower Roll No. 5.

f. 16. Prior de Wallingford, Rogerus de Quincy. 112

1235—6, A.R. 19—20.

Cases in Note Book 1133—1171.
No Roll extant.

f. 195.	Buck.	Walterus de Emdene, Alicia filia Ernaldi.	1139
f. 317.	Linc.	Johannes de Daco, Filia Johannis de Bray.	See 1201
f. 433 b.	Bedf.	Johannes de Traylie, Walterus de Godardville.	1133

[1] The case concerning John of Monmouth on f. 277 b (see also f. 422 b) is in the printed book cited from A.R. xiij, but in some MSS from A.R. xlij. The citation on f. 241 b as to prebendal churches is in the printed book from A.R. xvj, but in all MSS that I have seen from A.R. xviij.

1236—7, A.R. 20—21.

Cases in Note Book 1172—1218.
No Roll extant.

f. 31 b.		si Simon filius Wydonis.	1203
f. 195.	York.	si Wilhelmus de Stocbrige.	
f. 272.	York.	si Stephanus de Pulthorp.	1195
f. 292 b.	Linc.	Lambertus filius Lamberti.	1209

1237—8, A.R. 21—22.

Cases in Note Book 1219—1238.
Roll extant. A = Coram Rege Roll No. 45.

f. 54 b.	Salop.	Godefridus de Gamages.	1224

1238—9, A.R. 22—23.

Cases in Note Book 1239—1274.
No Roll extant.

f. 169 b.		Robertus de Toteshall, Prior de Bricksete.	1248
f. 195 and 200.		si Robertus Bieard (Byrd).	
f. 195 and 200.		si Richardus de Merlay.	
f. 195.	Suff.	si Radulphus filius Roberti.	
f. 200.	Norf.	si Robertus de Rikinghale.	

1239—40, A.R. 23—24.

Cases in Note Book 1275—1288.
No Roll extant.

f. 373.	Hants.	Dom. Rex., W. de S. Johanne.

Later Cases. A.R. 31.

f. 414.		Michael Abbas Glastoniensis, Rogerus Episcopus Bathoniensis.
f. 414 b.		Petrus de Solandia, Abbas de Rivall.

A.R. 32.

f. 234 b.	Hants.	Simon de Vendenge, Jordanus de Insula.

A.R. 32—33.

f. 241.	Norf.	W. Bardolf, et heres de Meanton, Ecclesia de Suterlege.

A.R. 33.

f. 368.		Richard Syward.

A.R. 46.

f. 159.		Petrus de Sabaudia.

C.

Pleas from the Eyre Rolls.

Reign of John (?). Eyre of Pateshull in Leicester.

f. 364. Anon. Essoin. Record of four knights.

1218—9, A.R. 3. *Eyre of Pateshull and the Bishop of Durham in Yorkshire.*

Commission Rot. Cl. vol. I. p. 380 b.

f. 50.	si Rogerus de Halgheton.
f. 200 b.	si Jacobus filius Siwardi.
f. 272.	si Rogerus de Maundeville.
f. 277.	si Rogerus de Amundevil.
f. 297.	Alicia uxor Adae filii Petri.
f. 297.	Alicia uxor Hugonis de Alencester.
f. 298.	Matylda uxor Roberti de Haywarde.
f. 303 b.	Muriella uxor Hugonis de Hauerton.
f. 320.	Aghevilda Murdac.
f. 320.	Reginaldus Murdaker.
f. 322.	Anon. Entry sur cui in vita.
f. 394 b.	Anon. Warranty.
f. 395.	Wilhelmus de Vavasour.

1219—20, A.R. 4. *Eyre of Pateshull in Lincoln.*

Roll extant. Tower Roll No. 1.

f. 298. Dernia uxor Roberti Bryton.

1220, A.R. 5. *Eyre of Pateshull and R. de Vere, Earl of Oxford in Hertford.*

Commission, Rot. Cl. vol. I. p. 473 b.

f. 200 b.	Anon. Attaint. Villeinage.
f. 430 b.	si W. de Ludwich.
f. 430 b.	Matilda filia Godwini.

1220, A.R. 5. *Eyre of Pateshull and the Abbot of Reading in Worcester.*

Commission, Rot. Cl. vol. I. p. 476.
Roll extant. Assize Roll M. 6, 31. 1.

f. 54 b and 246 b.	Anon. Gift of advowson by one who has not presented.
f. 128.	Anon. Outlawry.

f. 141.	Anon. Appellant must be eye-witness.
f. 244 b.	Ecclesia S. Mariae de Wichio.
f. 285 b.	Anon. Layman brings a Juris Utrum.
f. 332 b.	Anon. Privilege of Templars and Hospitallers.

1220, A.R. 5. *Eyre of Pateshull and the Abbot of Reading in Gloucester.*

Commission, Rot. Cl. vol. I. p. 476.
Rolls. Coram Rege Roll No. 13.
Assize Roll M. 2, 14. 1.

f. 166.	si Philippus le Riche.
f. 288.	Anon. Assisa utrum una hyda terrae.
f. 307 b.	Clementia de Dodewell.
f. 390, 390 b.	Radulphus Chandos.

1220, A.R. 5—6. *Eyre of Pateshull and the Abbot of Reading in Hereford.*

Commission, Rot. Cl. vol. I. p. 476.

f. 13.	Anon. Gift to concubine and children.
f. 124 b.	Anon. Manupast. [The name Hertford in the printed book should be Hereford.]
f. 273.	si Laurentius Galant.
f. 311.	Ascelma Pickednese. [Wrongly cited from Hertford.]

1220, A.R. 5. *Eyre of Pateshull and the Abbot of Reading in Warwick.*

Commission, Rot. Cl. vol. I. p. 476.
Rolls. Assize Roll M. 6, 16. 1.
Assize Roll M. 6, 16. 2.

f. 83 b.	Robertus de Halgeford.	
f. 180.	si Will. de Ludington.	
f. 199.	si W. de Ardern.	
f. 266 b.	Anon. Ass. mor. ant. against lord who pleads partial non-tenure.	
f. 269 b.	Anon. Ass. mor. ant. against lord who pleads partial non-tenure.	
f. 270 b.	si Fredericus.	
f. 272.	si Will. Turpin.	
f. 275 b.	Anon. Gift of socage land by infant.	
f. 340 b.	Anon. Full age of tenant in socage.	
f. 381 b.	Egidius de Erdington, W. de Norf.	
f. 390 b.	Will. Trussell. Ass. mor. ant.	See 196.

1220, A.R. 6. *Eyre of Pateshull and the Abbot of Reading in Leicester.*

Cases in Note Book 1942—1971.
Commission, Rot. Cl. vol. I. p. 476.

f. 23.	si Robertus filius Martini.	1965
f. 272.	si Gilbertus.	
f. 275 b.	si Walterus filius Wilhelmi.	1957
f. 370 b.	Hugo filius Wilhelmi.	

1220, A.R. 6. *Eyre of Pateshull and the Abbot of Reading in Stafford.*

Cases in Note Book 1972—1982.
Commission, Rot. Cl. vol. I. p. 476.

1220, A.R. 6. *Eyre of Pateshull and the Abbot of Reading in Shropshire.*

Commission, Rot. Cl. vol. I. p. 476.
Assize Roll M. 5, 8. 1.

f. 278.	Anon. Assize turned into jury by consent. Bastardy.
f. 280 b.	Anon. Probably same case as last.
f. 340 b.	si Vincentius. [Date doubtful.]

1222, A.R. 6. *Eyre of de Burgh and Pateshull in Norfolk.*

Cases in Note Book 1791—1807.

No commission found. Bracton cites two of the cases which are in the Note Book (1798 and 1803) as from Pateshull's eyre in Norfolk A.R. 10, of which eyre no other trace has been found. De Burgh was at Norwich from 13 to 23 Sept. 1222 (Rot. Cl. vol. I. p. 510—1).

1225, A.R. 9. *Eyre (general commission of assize and gaol delivery) of Pateshull in Hampshire.*

Commission, Rot. Cl. vol. II. p. 76.

f. 167.	si Radulphus de la Haye.
f. 170 b.	si Adam Gerun.

1225, A.R. 9. *Eyre (general commission of assize and gaol delivery) of Pateshull in Northampton.*

See Rot. Cl. vol. II. p. 76 and 78 b (last entry).

f. 169.	si Rogerus de Deneford.

1225, A.R. 9. *Eyre (general commission of assize and gaol delivery) of Pateshull in Norfolk*[1].

f. 398. Anon. Witnesses to deed not present at its making.

1225—6, A.R. 10. *Eyre of Pateshull in Norfolk.*

See above under Norfolk Eyre of A.R. 6.

f. 212 b. Anon. Two coparceners bring assize; husband of one is outlaw. 1798

f. 239. si Bartholomeus de Waterdene. 1803

1225—6, A.R. 10. *Eyre of Pateshull in Sussex.*

No trace has been found of any such eyre. One of Bracton's two citations has been tracked to Suffolk, which probably is the right county for both.

f. 238 b. si Adam de N.

f. 238 b. si Thomas de Coluile. 1909

1226, A.R. 10. *Last Eyre of Pateshull in Lincoln.*

Commission, Rot. Cl. vol. II. p. 151.

f. 142 b. Gilbertus filius Aldrendi, Alanus Swadi.

f. 146 b. Thomas de Rasne.

f. 271 b and 277. si Agnes filia Evae (Eliae) de Benyngworth.

f. 277 b. si Leonata.

f. 296. si Petrus filius Wymund.

f. 297 b. Helewiza uxor Wasae.

f. 309. Basilia uxor Henrici filii Wareni.

f. 309. Robertus de Arundel et Katerina.

f. 310. Alicia uxor Ricardi filii Divae.

f. 314 b. Anon. Admeasurement of dower.

f. 426 b. Thomas de Rasue.

f. 430 b. Hugo de Hull.

f. 438[2]. Walterus de Lyne, Terra de Grimesby.

1226, A.R. 10—11. *Last Eyre of Pateshull in Yorkshire.*

Cases in Note Book 1844—1890.
Commission, Rot. Cl. vol. II. p. 151.

f. 28. Anon. Gift shortly before death. 1876

f. 260 b. si Walterus Chamlenger. Assize taken on default of warrantor.

[1] The case is cited without any year being mentioned. I can not find that Pateshull visited Norfolk in A.R. 9, but the commissions of that year are the only general commissions of assize and gaol delivery that I can find. Bracton's mode of citing implies that the case is not from an eyre ad omnia placita.

[2] Cited from Leicester, but this must be a mistake.

f. 277[1].	si Odo filius Thorsin.	1878
f. 280.	Anon. Bastardy.	
f. 298.	Juliana.	1873
f. 304 b.	Emma uxor Raymeri le Franceys.	1848
f. 381.	Petrus de Malo Lacu, Johannes de Bessacre.	1869
f. 414.	Rogerus de Fanborne.	1847
f. 418.	si Radulphus de Bully.	1859

1226, A.R. 10—11. *Last Eyre of Pateshull in Lancashire.*

Case in Note Book 1294.
Commission, Rot. Cl. vol. II. p. 151.

f. 50 b[2].	Rogerus de Monte Vegonis.	1294

1227, A.R. 11—12. *Eyre of Pateshull in Kent.*

Cases in Note Book 1764—1790.
Roll. A = Coram Rege Roll No. 28.
Commission, Rot. Cl. vol. II. p. 213.

f. 205 b.	Anon. Lord seizing land for arrears of rent.	1767
f. 239.	Anon. No resummons in the eyre.	1778
f. 244 b.	Prior de Lewes, Wilhelmus de Arbervil.	
f. 261.	si Robertus de Wylington.	1766
f. 274.	si Manasserus de Hastings.	
f. 275.	si Emma mater Rogeri.	1783
f. 276 b.	si Henricus filius Yaonis.	
f. 280 b.	si Wilhelmus de Herst.	1775
f. 280 b.	si Henricus Paynefore.	1780
f. 371.	Ingerianus de Shoford.	
f. 417 and 418 b.	si Henricus Pamsore (Pamfurere).	1780
f. 418 b.	si Wilhelmus de Herst.	1775
f. 430 b[3].	W. filius Roberti.	
f. 433 b.	Godefridus de Resiton.	

1227, A.R. 12. *Last Eyre of Pateshull in Suffolk.*

Cases in Note Book 1890—1938.
Roll. A = Tower Roll No. 14.
Commission, Rot. Cl. vol. II. p. 213.

f. 50.	si Anselmus.	1919
f. 50.	Johannes filius Hugonis.	1921
f. 205 b.	si Joceanus de Hesture.	See 1913
f. 226 b.	si Johannes de Stantone.	
f. 239.	si Radulphus de Wadleyham.	

[1] Wrongly attributed to A.R. 12.
[2] Wrongly attributed to A.R. 16.
[3] Attributed to A.R. 13.

f. 271.	Mabilia et Johanna.	1906
f. 273 b and 277.	si Wilhelmus de Carleton.	
f. 274.	si Rogerus Battayl.	
f. 275.	si Rogerus de Gloc.	1898
f. 278.	si Philippa de Cockfend.	
f. 278.	si Walterus Curteys.	1924
f. 285 b.	Robertus de Bedentone.	1920
f. 286.	Anon. Assisa utrum.	
f. 286.	Thomas persona de Framesdon.	
f. 297.	Agneta uxor Rufi.	1936
f. 304 b[1].	Comitissa de Oxonia, Wilhelmus Blundus.	1916
f. 320.	Wilhelmus de Wanham.	
f. 340 b[1].	Anon. Majority of socager.	
f. 388.	Matilda uxor Mathiae de Thurfenne.	
f. 398.	si Mabilla.	1891

1227, A.R. 12. *Eyre of Pateshull in Norfolk.*

Cases in Note Book 1808—1843.
Commission, Rot. Cl. vol. II. p. 213.

f. 148.	Radulphus de Sherings.	
f. 212.	si Gylbertus filius Gilberti.	
f. 269 b and 275.	si Eudo pater Walteri.	1827
f. 420.	si Henricus de la Stoke.	1810

1229, A.R. 13. *Eyre of Raleigh in Middlesex.*

See above Pleas in the Bench of Trinity Term A.R. 13.

1232, A.R. 16—17. *Eyres of Raleigh in Warwick, Leicester, Northampton, Bedford, Buckingham.*

Commission, Rot. Pat. 16 Hen. 3, m. 11 d.

Warwick.

f. 188.	si Gerardus filius Wilhelmi.
f. 226.	si Augustinus.
f. 260 b.	Anon. Ass. mor. ant. Death of one co-plaintiff.
f. 320 b.	Hugo de Cayel Marestorp.
f. 330 b.	Anon. Record of summons by sergeant of the hundred.
f. 381.	Anon. Warranty of tenant's assignee.
f. 381.	Sibilla. Dower.
f. 393 b.	Will. fil. Robert.
f. 417 b.	si Will. de Munworth. Ass. mor. ant.

[1] Attributed to A.R. 10.

Leicester.

f. 159 b.	Rogerus le Suche.
f. 199 b.	si Rob. Freeman.
f. 266 b.	Humfredus de Leyc'. et Juliana ux. ejus.
f. 286.	Anon. Assisa utrum.
f. 311.	Anon. Dower. Land assigned to another woman.

Northampton.

f. 266 b and 273 b.	Wilhelmus de Camera.
f. 274.	Radulphus Basset, Thomas Picteale.
f. 319.	Petrus de Galdington.

Bedford.

f. 170.	si Milo.
f. 247 b.	Hubertus de Vallibus.
f. 312.	Emma Bovastra.
f. 430 b.	Juliana de Nodariis.
f. 438.	Anon. Curtesy.

Buckingham.

f. 200.	si Walterus le Gardner.
f. 200 b.	si Lucia.
f. 260 b.	si Simon de Hokedes.
f. 271.	si Alicia.
f. 271 b and 277 b.	si Henricus Russell.
f. 272 b and 277 b.	si Ric. Faber.
f. 274.	si Ric. Avenel.
f. 304.	Alicia ux. Baldwyn.
f. 390.	Alicia de Rupella.

Date uncertain. Eyres of Raleigh in Lincoln and Kent.

f. 435 b.	Linc[1].	W. de Berningehurst.
f. 276 b.	Kent.	si Adhelolphus.
f. 280 b.	Kent.	si Adam le Gardener.

Later Case.

f. 413.	Anonymous case cited from eyre of Raleigh in Nottingham in A.R. 30 but according to many MSS and in all probability from the eyre of Thurkelby (with whom was Bracton) in A.R. 29.

[1] Probably Leicester.

D.

Undated Cases.

f. 26. Case before John of Metingham. An interpolation; not in any MS. that I have seen.

f. 27. Cecilia de Stradesete. From a Hilary term in an unspecified year. See Note Book, Case 836.

f. 29. Godfrey of Crewcombe, Robert of Muscegros. In but few MSS; sometimes in margin; marked as *Plus* in MA.

f. 32. Ecclesia in Hebland. Lincolnshire.

f. 35 b. Abbess of Barking. See Case 758.

f. 45. Case before John of Lexington. In some MSS this is not found.

f. 49 b. Roger de Reyne, Robert de Shute. A case of 1254 heard by Bracton. See above p. 39.

f. 50. Case from an eyre of Simon Pateshull (a judge of John's reign) in Leicester and Suffolk. The MSS generally read *S* or *Simonis;* but this may be a mistake.

f. 56 b. Abbot of St Albans and Geoffrey of Childwick. Probably after 1250. See Mat. Par. vol. 5, p. 129.

f. 65. William Mandeville, Earl of Essex and Maud, Countess of Hereford. An early case for the Earl died in 1227. See Case 297.

f. 88 b. Henry de Tercy (corr. Tracy), William of Punchardon, Roger Venpel (corr. Beaupel). An addition relating to Bracton's Devonshire neighbours. In margin of OA, OB and not in some other MSS.

f. 93 b. Countess of Lincoln widow of Walter Earl Marshall. He died in 1245.

f. 114. Abbot of Rievaulx and Peter of Savoy. Part of a long passage which is marginal in OA and not in some other MSS. It is again cited Br. f. 414 b and from A.R. 31 (1246–7).

f. 125 b and 128. "Responsa" given to Richard Ducket by Martin Pateshull, who died in 1229.

f. 141. Richardus Neale, Radulphus de Gray (corr. de Bray), vicarius de Gaine (corr. Vitalis Engayne). This comes from 1225; see Case 1673. Citation marginal in OA.

f. 144 b. A man of Cookham. From Raleigh's time. Marginal in OA; not in several other MSS.

f. 183.	An opinion of William of York. Before 1246 when he became Bishop.
f. 183.	Case of Walter de L'Isle and Prior of Kenilworth, or perhaps (Br. f. 433 b) of Wenlock. A marginal note, not in all MSS.
f. 194 b.	Thomas of Vipont. Probably a marginal note.
f. 207 b.	Opinion of Pateshull as to disseisin.
f. 212.	A perambulation between the king and Richard Percy.
f. 261.	Ass. mort. ant. si Brianus. Case 47.
f. 270.	Case of Robert de la Zuche.
f. 275.	Ass. mort. ant. si Eudo pater Walteri. Case 1875; from A.D. 1228.
f. 285.	Johannes de Daco. Case 1201.
f. 285 b.	Assisa utrum. Church of S. Mary, Oxford. From Michaelmas 1253; see Coram Rege Roll No. 93, m. 32. In but very few MSS.
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f. 292.	de Alberto Comite Somers'. No such person as Albert Earl of Somerset.
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f. 307.	Consultation of Pateshull by bishop of Worcester.
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f. 310 b.	John of Braose, William of Braose.
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f. 330.	A Lancashire custom approved by Pateshull.
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f. 377 b.	Thomas de Dunholm. Plea which followed the king; before Segrave.
f. 382 b.	Ordinance made on the occasion of the dedication of the Abbey of Hailes, 5th Nov. 1251. See Mat. Par. vol. 5, p. 262.
f. 403 b.	Vacancy of bishopric of Rochester. This occurred Feb. 1235—Nov. 1238.
f. 403.	Archbishop Edmund called Saint. He died 16 Nov. 1240; was canonized 16 Dec. 1246.
f. 405.	Walter Muschet. Bastardy. See Case 299.
f. 406.	Consultation of Pateshull.
f. 418.	Adam of Aston. Judgment of Robert Lexington reversed by Pateshull.
f. 420 b.	Case before the king as to the heir of Herbert Fitz Peter.
f. 421 b.	W. Burdon de Deseburgh, who married a nun.

f. 422 b.	William Longsword, Earl of Salisbury. See Case 1235.
f. 424.	Countess de L'Isle, W. de Crecure, W. de Honywell.
f. 427 b.	W. Earl Marshall and M. (corr. Ingelram) de Feynes owe allegiance to kings of France and England. The last person who can be described as W. Earl Marshall is Walter who died in 1245.
f. 430.	Countess of Oxford and W. Blund. Case 1916.
f. 433 b.	Marginal note. Case of W. de L'Isle and Prior of Wenlock, or of (see Br. f. 182) Kenilworth.
f. 438.	Opinion of Segrave as to curtesy.
f. 438 b.	Raleigh devises a writ for Ralph of Dadescomb.

TABLE THE THIRD.

TABLE OF FITZHERBERT'S CASES FROM THE REIGN OF HENRY THE THIRD, ARRANGED IN CHRONOLOGICAL ORDER AND IDENTIFIED WITH CASES IN THE NOTE BOOK.

		Cases in the Note Book.
A.R. 2.		
Mich.	Age 149	1306
	Graunt 89	1338
	Prescription 59	1349
	Voucher 283	1306
Hil.		
Pasch.		
Trin.		
No term specified.		
	Dower 199	1335
	Prohibicion 13	11
	View 144	12
A.R. 3.		
Mich.		
Hil.		
Pasch.		
	Essone 186	23
Trin.		
No term specified.		
	Prescription 56	12
A.R. 4.		
Mich.		
	Darren Presentment 22	100 (Hil.)

		Cases in the Note Book.
A.R. 4.		
	Dower 179	110 (Hil.)
	Dower 180	96 (Hil.)
	Estrepement 12	115 (Hil.)
	Formedon 64	61
	Prohibicion 14	48
	Prohibicion 15	50
	Waste 129	56
	View 145	56
Hil.		
Pasch.		
Trin.		
	Devise 26	1409
	Prohibicion 28	1409
	Waste 140	1371
	Briefe 766	1361
A.R. 5.		
Mich.		
	Essone 187	309
Hil.		
	Essone 196	1591 (Hil. A.R. 7)
	Prohibicion 29	1585 (Hil. A.R. 7)
Pasch.		
	Mordauncestor 53	1478
Trin.		

		Cases in the Note Book.
A.R. 6.		
Mich.		
Hil.		
	Admeasurement 18	150
	Attaint 72	151
	Dower 181	159
	Dower 182	160
	Prohibicion 16	152
	Prohibicion 17	162
	Quare impedit 182	142
	Voucher 273	141
Pasch.		
	Attaint 73	174
Trin.		
	Age 148	207
	Avowrie 242	202
	Droyt 55	207
	Prohibicion 18	210
	Proses 209	205 (?)
A.R. 7.		
Mich.		
Hil.		
	Prohibicion 29	1585
	Prohibicion 30	1599
	Trespas 244	1597 (?)
Pasch.		
	Waste 141	1617
Trin.		
A.R. 8.		
Mich.		
	Droyt 63	1630
	Prescription 60	1644
Hil.		
	Devise 25	221
	Garde 139	236
	Prohibicion 19	221
	Proses 210	222
Pasch.		
	Briefe 880	1018 (Trin.)
	Dower 193	972
	Essone 195	1028 (Trin.)
A.R. 8.		
Trin.		
	Briefe 879	1010
	Dower 194	1007
	Dower 195	1008
	Prescription 58	990
A.R. 9.		
Mich.		
	Ley 78	897
Hil.		
	Dower 196	1042
Pasch.		
	Dower 197	1098
	Dower 202	1071
	Waste 137	1075
Trin.		
	Dower 190	721
	Dower 191	736 (Hil. A.R. 17)
	Garde 145	742 (Hil. A.R. 17)
	Prescription 63	703
	Prerogative 25	743 (Hil. A.R. 17)
	Prohibicion 25	719
	Waste 136	738 (Hil. A.R. 17)
	Voucher 277	734 (Hil. A.R. 17)
A.R. 10.		
Mich.		
	Dower 200	1669
	Prescription 64	1663
Hil.		
	Corone 434	1725
	Dower 201	1718
	Garde 150	1698
Pasch.		
	Cessavit 60	1767 (Kent Eyre A.R. 11)
	Droyt 64	1782 (Kent Eyre A.R. 11)
	Waste 142	1743
Trin.		

	Cases in the Note Book.
A.R. 11.	
Mich.	
Hil.	
Pasch.	
Droyt 56	249
Garde 149	256
Trin.	
Dower 186	265
Dower 187	279 (A.R. 12)
Dower 188	266
Droyt 57	259
Droyt 58	274 (A.R. 12)
Mesne 75	275 (A.R. 12)
A.R. 12.	
Mich.	
Hil.	
Pasch.	
Trin.	
No term specified.	
Garde 151	1840 (Norfolk Eyre, A.R. 12)
Mordauncestor 54	1857 (Yorkshire Eyre, A.R. 10—11)
Villenage 42	1814 (Norfolk Eyre, A.R. 12)
A.R. 13.	
Mich.	
Garde 141	288
Garde 142	295
Prohibicion 20	293
Hil.	
Pasch.	
Trin.	
Prohibicion 21	341
No term specified.	
Dower 188[1]	1182 (A.R. 21) (?)
Garde 147	1267 (A.R. 23)

	Cases in the Note Book.
A.R. 14.	
Mich.	
Admeasurement 10	365
Dower 189	374
Presentement al Esglise 16	380
Quare impedit 183	350
Hil.	
Droyt 59	392
Pasch.	
Essone 188	404
Essone 189	405
Trin.	
Briefe 877	413
Essone 190	420
Quare impedit 184	423
Voucher 275	413
A.R. 15.	
Mich.	
Droyt 60	441
Duress 15[2]	
Prohibicion 22	442
Waste 130	443
Hil.	
Attaint 74	524 (?)
Essone 191	483
Essone 192	509
Faux jugement 20	511
Garde 143	505
Garraunt de Chartres 25	486
Waste 131	485
View 173	534
View 174	510
Pasch.	
Briefe 878	517
Droyt 61	535
Mesne 76	546
Prohibicion 23	544
Waste 132	540
Voucher 276	534

[1] The second of the two cases thus numbered.
[2] Plainly a case from the reign of *Edward* the Third.

		Cases in the Note Book.
A.R. 15.		
Trin.		
	Essone 193	608
	Prescription 57	622
	Waste 133	578
	Waste 134	606
	View 175	589
A.R. 16.		
Mich.		
	Avowrie 243	656
	Feffements 117	658
	Garde 144	660
	Prohibicion 24	645
	Waste 135	631
Hil.		
Pasch.		
	Assize 430	700
	Nuper obiit 17	701
Trin.		
	Voucher 274	942 (?)
A.R. 17.		
Mich.		
	Dower 192	878
	Garde 146	860 (?)
Hil.		
	Garde 146[1]	752
	Prohibicion 26	755
	Recovere en value 25	748
	Voucher 278	736
Pasch.		
Trin.		
A.R. 18.		
Mich.		
	Covenant 30	799
	Droyt 62	804
	Essone 194	800
	Prohibicion 27	803
	Voucher 279	782
	Voucher 280	790

		Cases in the Note Book.
A.B. 18.		
Hil.		
	Mesne 77	834
	Voucher 281	832
Pasch.		
	Mesne 78	844
	Recovere en value 26	847
Trin.		
A.R. 19.		
No term specified.		
	Darren present-ment 23	1117
	Juris utrum 16	1117
A.R. 20.		
No term specified.		
	Assize 431	1133
	Assize 432	1203 (A.R. 20)
	Assize 433	1205 (A.R. 21) (?)
	Bastardy 29	1160
	Discontinuance 52	1205 (A.R. 21) (?)
	Waste 138	1144
	Waste 139	1165
A.R. 21.		
No term specified.		
	Briefe 881	1213
	Briefe 882	1220 (A.R. 22)
	Cosinage 13	1215
	Dower 198	1182
	Prerogative 26	1221 (A.R. 22)
A.R. 22.		
A.R. 23.		
No term specified.		
	Assize 434	1239
	Assize 435	1246
	Assize 436	1248
	Assize 437	1253
	Assize 438	1255

[1] The second of the two cases thus numbered.

	Cases in the Note Book.
A.R. 23.	
Dower 203	1246
Garde 147	1267
Garde 148	1270
Garraunt de Chartres 26	1268
Particion 18	1273
Toll 5	1250
Toll 10	1246
A.R. 24.	
No term specified.	
Assize 439	1276
Garde 149	1286
Particion 19	1279
Prerogative 27	1278
A.R. 5.	
Leicester Eyre.	
Assize 426	1953
[1] Attaint 75	1965
Droyt 66	1944
Mordauncestor 51	1954
Recovere en value 27	1964
Taile 28	1958
A.R. 6.	
Stafford Eyre.	
Assize 425	1979
Comen 26	1975
A.R. 12.	
Stafford[2] Eyre.	
Assize 427	1915
Assize 428	1911
Assize 429	1910

	Cases in the Note Book.
A.R. 12.	
Suffolk Eyre.	
Bastardy 30	1909
Dower 183	1908
Mordauncestor 52	1912
Mordauncestor 55	1903
Forfayture 33	1908
A.R. 12.	
Norfolk Eyre.	
Voucher 282	1930 (Suff.)
A.R. 12.	
Yorkshire Eyre.	
Comen 25	1881
Droyt 65	1871
Garde 152	1872
Garraunt de Chartres 27	1880
Prescription 61	1888
Prescription 62	1889
[3] Villenage 43	1887
A.R. 47.	
Devon Eyre.	
Dower 174	
Villenage 39	
Voucher 270	
A.R. 47.	
Cornwall Eyre.	
Ayd 175	
Droyt 52	
Garraunt 99[4]	
Voucher 271	

[1] A.R. 15 in Fitz. Abr. [2] Corr. *Suffolk*. [3] A.R. 13 in Fitz. Abr.
[4] Ascribed to 47 *Edward* III.; but probably from this eyre.

INDEX OF ACTIONS.

NOTE :—It is difficult to classify the English forms of action according to any one principle, because the traditional classification has undergone many gradual changes, e.g. an action which one age called 'real', another called 'personal' or 'mixed'. In making this Index I have thought more of the convenience of modern readers than of the legal logic of Bracton's day. Proceedings are here arranged under twelve heads:—(i) Writs of Right, (ii) Dower, (iii) Writs of Entry, (iv) Assizes of Novel Disseisin and of Nuisance, (v) Assizes of Mort D'Ancestor, Nuper Obiit, Cosinage, (vi) Assizes Utrum, (vii) Assizes of Darrein Presentment, Quare impedit etc., (viii) Miscellaneous Proceedings, most of which are reckoned in later days as real or mixed actions, but some of which are closely allied to trespass, (ix) Personal Actions, including actions on Fines and Warrantia Cartae, (x) Criminal Proceedings, (xi) Proceedings of an Appellate Character, including Attaint, Error, False Judgment, etc., (xii) Prohibition.

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[1] The county named is that of the marginal venue. In consulting this Index it should be remembered that the boundaries of counties have in many cases been changed. I have attempted to give in the second column the modern names when this could be done without much risk.

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